

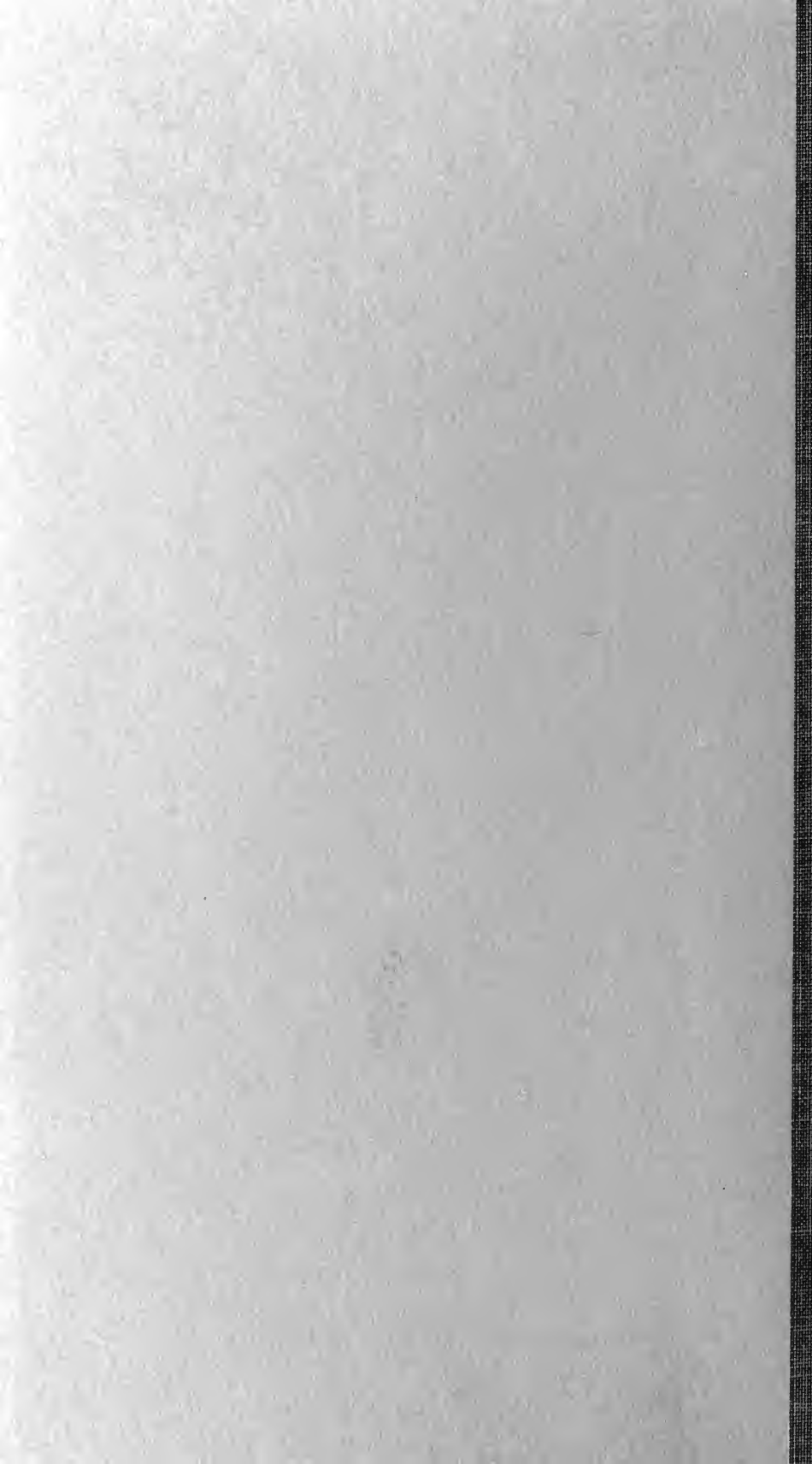
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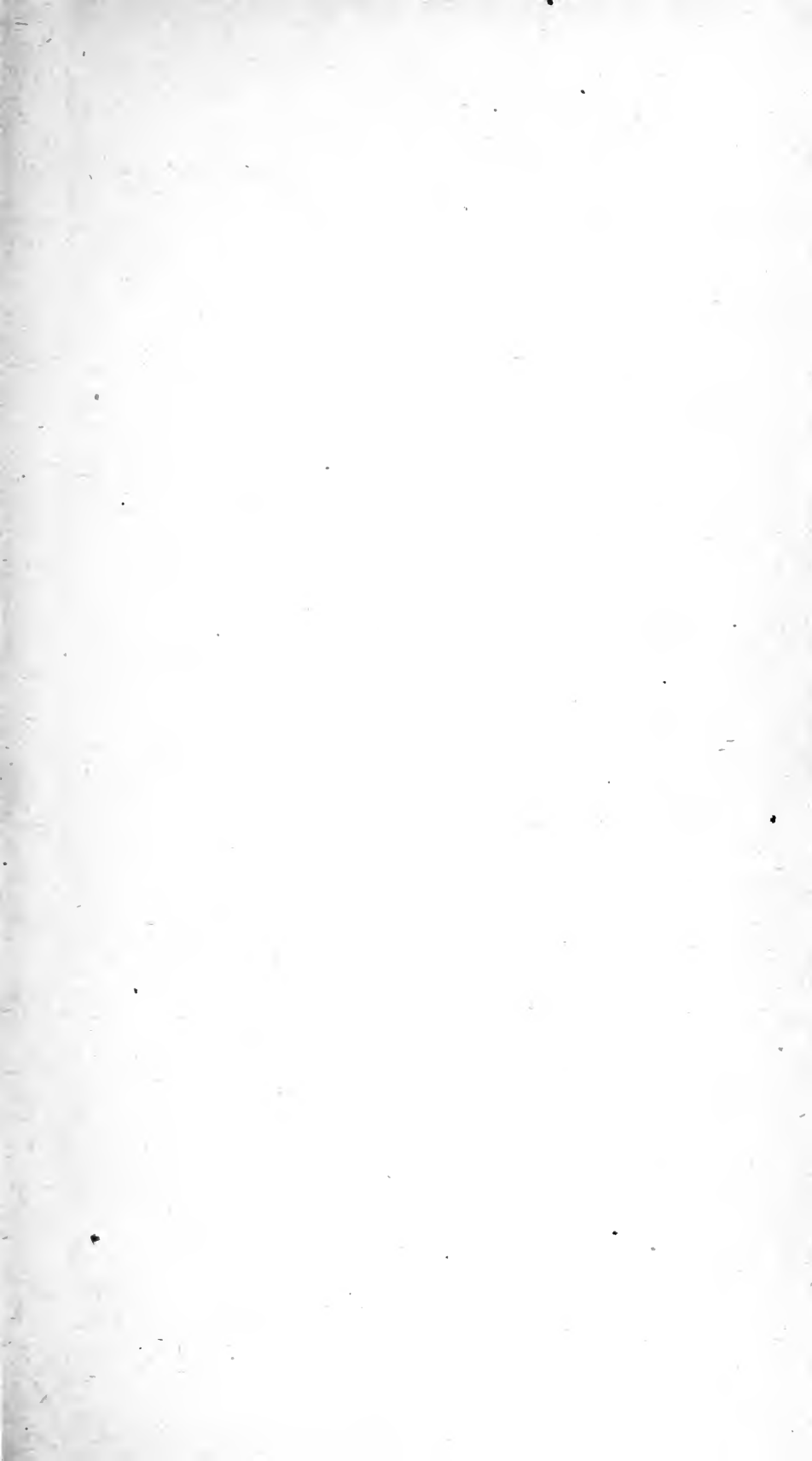


UNIVERSITY OF TORONTO

Kleberg, Rudolph
To strengthen the
Interstate commerce
commission

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1898
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Kleberg, R.

TO STRENGTHEN THE INTERSTATE COMMERCE
COMMISSION, GIVING IT POWER
TO FIX RATES, ETC.

INTERSTATE
COMMERCE COMMISSION
LIBRARY.

SPEECH

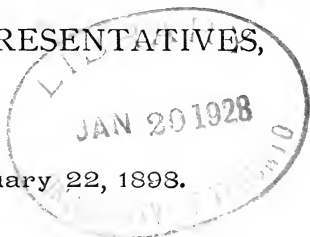
OF

HON. RUDOLPH KLEBERG,
OF TEXAS,

IN THE

HOUSE OF REPRESENTATIVES,

Saturday, January 22, 1898.



WASHINGTON.
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SPEECH
OF
HON. RUDOLPH KLEBERG.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill (H. R. 6896) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1899, and for other purposes—

The CHAIRMAN. The Clerk will report the amendment for information.

The amendment was read, as follows:

Strike out lines 3, 4, 5, 6, and 7, page 57, and insert the following:

"That in the transportation of all supplies furnished by the United States Government to the various Indian tribes in the United States, and transported for that purpose from one State or Territory into another State or Territory, the Interstate Commerce Commission shall, upon the application of the Secretary of the Interior, after reasonable notice to all roads affected thereby, prescribe such maximum rates of freight charges as shall, in the judgment of the commission, be fair and reasonable; which rates, when so fixed, shall be binding upon all railroads and connecting lines engaged in the transportation of like or similar freights; and any railroad or connecting line refusing to receive and transport such freight shall forfeit to the United States the sum of \$5,000 for each day they shall so refuse to receive and transport the same, to be recovered upon the suit of the United States in any court having jurisdiction."

Mr. SHERMAN. I do not understand that the gentleman offers that amendment now.

Mr. LITTLE. Oh, certainly not. That is an amendment I propose to offer at the proper time.

* * * * *

Mr. KLEBERG. I thank the gentleman from Arkansas [Mr. LITTLE] for his kindness. I wish to make some general observations in regard to what he has said as to an amendment which he will offer at the proper time. I cordially agree with him that the amendment should be ingrafted on the bill before its passage, because it is certainly not right that this Government should pay charges for freight out of all reason to some privileged railroad corporations. It seems from this statement and from the letter which has been read before the committee that it is true that these railroad companies have combined, or, in other words, pooled their issues, and are charging the Government rates entirely out of proportion with the economical administration of the Government and the expenditure of the Government money.

But I would remind him, as I would other members of the committee, that while I perfectly agree that this matter should be left with the Interstate Commerce Commission, by the construction of our Supreme Court, whose decision I am not here to criticise, the Interstate Commerce Commission has no power to fix

any rates, either maximum or minimum or absolute. It is true that for the last ten years not only that commission but a large majority of the American people thought that that great power was vested in that body so that it might fix reasonable rates upon the charges for freight by the railways.

Yea, that commission has proceeded upon that conclusion. Up to the time that the Supreme Court rendered its decision that it possessed no such power, it has gone on and fixed the railway rates upon a reasonable basis—has seen to it that they were fair and just.

I regret that I have not time to go over this great subject fully, because it should be fully discussed in this House. And not only should it be discussed, but some measure of legislative relief should be adopted by which the chaos which has existed since that important decision, the freight-bureau decision, may be brought to an end and order restored, so that the American people as well as the railways may know what freights are to be charged in the future.

Year after year we have had reports from this commission asking for necessary legislation not only upon the question of fixing rates (because it was supposed that the commission had that power under the interstate-commerce act), but asking other legislation by way of relief—the classification of freights, the public accounting of these great corporations; and I refer to them in no offensive sense; I am speaking in the interest of the people and also in the interest of honest railway investment. These reports, I say, have been made to Congress every year. The commission has done its full duty in pointing out the defects in the present law. Yet nothing has been done, except possibly the passage of some bill which would benefit the railways in their efforts at pooling. Such is the condition of the country to-day. We have on the one hand the railways asking for legalized pooling (that is, asking the privilege of fixing the rates and dividing the revenues among themselves), and on the other hand we have the Interstate Commerce Commission asking, in behalf of the people, for the enactment of some legislation for general relief.

This question is beyond any party question. It is true that the Democratic party has stood and now stands in favor of strengthening the hands of the Interstate Commerce Commission; but it is equally true that the Republican members on that great commission are requesting at the hands of Congress some legislation looking to the interests of the people—which will give justice to the people as well as to the railways.

* * * * *

Mr. KLEBERG. Mr. Chairman, outside of the financial question there is probably none of greater importance awaiting early legislative action on the part of the Congress of the United States than the transportation question. The railways of the country have not only become on the one hand a necessity, but on the other a menace to the economic progress of our people. The very fact that without sufficient railroad facilities the commercial life of persons and localities is impossible brings about the sterner fact that without governmental control of these great arteries of commerce commercial and industrial freedom are impossible and Government itself is hampered, if not, indeed, threatened. The tendency to combination and concentration, which seems to be the specter of the coming era in our country's history, is nowhere more palpable and manifest than in the great railroad problem of

the United States. To quote from Mr. Adams, statistician of the Interstate Commerce Commission:

Looking at the matter in the light of history, railways, as administered, have destroyed the conditions under which the principle of competition can work for the great rank and file of business in a normal and satisfactory manner. In theory, competition is the central principle of our industrial structure. Both legislators and courts assume it to be present in the great majority of cases, and because of their confidence in its potency they deny the pertinency of socialistic arguments. In fact, however, competition has degenerated into a struggle for existence between great corporations or a struggle for special favors at the hand of great corporations, or it has ceased to exist altogether. In this lies the explanation of most of the industrial complications which perplex the nineteenth century. According to the common law of industries, competition is potent; but, in reality, competition is rendered impotent by the arbitrary manner in which railway managers administer their trusts.

If this be true, and that it finds adequate support in the history of the nineteenth century lies beyond reasonable controversy, the railway problem comes to be a problem of civilization. It is a question of keeping open the avenues of opportunity. There is involved in its solution the broad question of industrial liberty, and the technicalities of railway legislation take upon themselves a new meaning when one considers the true character and the industrial influence of railway transportation. As equality before the law is a canon of political liberty, so equality before the railways is a canon of industrial liberty. A solution of the railway problem means the reintroduction of those conditions under which competition can control industrial forces and deal justly as between industrial agents.

Our people are face to face with the momentous question whether they shall control the railroads or whether the railroads shall control them. These great corporations which once pleaded for privileges, franchises, and quasi-public functions to serve the people are about to dictate to them in a manner that their service shall be performed not to enrich the people, but rather to impoverish them and enrich the manipulators of the railroads. There was a time when the people, in their overanxiety to secure the necessity of railroad transportation, were wholly blind to the great power they transferred to the railroads and to the danger that this power could be abused, or they would have kept in view at least a plan for their reasonable control when they subsidized them and gave them right of way. I do not say this in a spirit of enmity against the great railroad interests which have grown up in this country, and have done probably more than any other agency to develop and civilize it, or with the slightest design to injure the actual property rights of those of our people who have their money invested and their interest involved in railroad securities or railroad employment, but in utter candor and fairness, in the face of the grave situation which threatens alike honest railroad investment and employment and the rights of the people generally; a condition alike destructive of the honest carrier and the honest shipper and which involves not only the rights and fortune but the very happiness, and, to some extent, the economic fate of our people; a condition which is the natural result of a system of fictitious capitalization and unjust discrimination, under which the construction and management of the railroads of the country have been accomplished and maintained, and which, crushing out competition among shareholders and transportation rates as well, is about to terminate in a great pool or trust of the entire railroad properties and activities of the country; a condition which contemplates that 185,000 miles of railroad in the United States, with annual earnings exceeding \$1,000,000,000, shall be under the management, if not the ownership and control, of a private railroad pool, to be operated in the interests of railroad magnates and railroad rings; a condition which must be aggravated and perpetuated rather

than improved, if the Congress of the United States will pass a pooling bill such as is demanded by the combined railroad influences now clamoring for the repeal of section 5 of the act regulating interstate commerce, passed February 4, 1887, and preventing pooling of freights of different and competing railroads, etc. The situation is just this: The Supreme Court of the United States having decided that a railroad pool in interstate commerce is, under the antitrust law, unlawful (*Trans-Missouri Traffic Association Case*), and that, on the other hand, the Interstate Railway Commission can not, under the present law, fix freight and passenger rates in interstate commerce (*Freight Bureau Cases*, 167 U. S.), has induced the railroads now to propose the repeal of the antipooling section of the interstate-commerce act, form a gigantic railway pool, fix rates, and divide earnings among the carriers entering the pool.

Discrimination on the one hand and rate cutting on the other inevitably drive the railroads to this last resort of forming a huge trust pool in self-preservation, as they claim, but which must result in the fostering of clique enterprises engaged in commerce and manufactures and other industries, and which in my opinion will assume such dimensions as to defy all control by the Government if once permitted to exist. The great trunk lines assume that under the prevailing practice of rate cutting it is impossible to live up to the rates in their published schedules, and that in self-defense they must be allowed to pool or go into bankruptcy, while the weaker railways fall into the practice of rate cutting to compete with the stronger companies.

In the meantime the Interstate Commerce Commission is powerless under the late decision denying it the power to fix rates, and the law under which it operates is inadequate to prevent unlawful discriminations, rate cutting, or unreasonable rates in freight and passenger traffic, all of which go on, with little or no restraint, at the expense of the shippers and producers, and seriously threaten not only the business enterprises of individuals but entire localities and communities; in short, veritable anarchy reigns supreme at present in the interstate commerce of our railways, and which, without intelligent and prompt action on the part of Congress, must end disastrously to every business interest in the country.

Three ways are suggested to bring order out of this chaos:

1. Railway pooling under certain legal restrictions.
2. Government ownership and management of the railways.
3. Thoroughgoing governmental control by an interstate railway commission, with legislative and administrative powers to fix rates and prevent discriminations and abuses.

Railway pooling as contemplated by the various measures before Congress is utterly vicious, because it only submits to governmental interference after the pooling contract has taken effect. If pooling is to be permitted at all, guaranties for such interference should be secured before the authority to pool is given and before the contract goes into effect. To this proposition I venture to say the railroads will never accede.

But I am opposed to the principle of pooling even under the most favorable conditions, because I believe it to be against public policy and the spirit and life of the economic conditions of this country. If the competitive principle in our industrial economy is to be modified as far as it applies to the railways, let it rather be by a rule of maximum and minimum rates than by a combination

which tends more to higher than to lower rates. If we are to bring our railroad system under the régime of socialism, let it be state socialism rather than private socialism.

If we must trust the faithful administration of our railway interests to a managing board, let it be to one appointed by the people through its governmental agency rather than one selected by the private owners and managers of railroads and railway property; for, to repeat an old truth, "When self the wavering balance holds, it's rarely well adjusted." Again, if discrimination, rate cutting, and other abuses under the competitive system are prevalent—and no doubt they are—what is to prevent these abuses under a gigantic pool, which can better afford to cover up its iniquities than the single corporation? And if pooling were legalized, would it not rather result in the forming of an Eastern, a Western, a Southern, and a Northern pool, which each in turn would discriminate against the other, with little or no danger of detection, because neither would be in the way of the other and each would occupy a different territory to itself?

Would the consequence of such an arrangement not tend to higher freight rates and greater burdens to the people; and would not such gigantic consolidation of railway interests, under the cloak of a Federal statute, overawe all State regulations and finally all national regulations? What would State and national railway commissions amount to in the face of such a quasi-legalized monster? To ask the question is to answer it; the servant would rule the master; the people would have bound themselves hand and foot, and instead of controlling other trusts, they would have encouraged clique enterprises to such an extent that private socialism would not only be complete but well-nigh invincible, and the utter impoverishment of the people accomplished to a degree that would hardly leave an avenue of escape from its thralldom except by a refuge to state socialism.

We are constantly reminded by the railway companies that there must not be a further reduction of rates; and if not a rise in rates, at least a check to lower rates. They emphasize stability and uniformity of rates, in order that a reasonable profit may be derived on the capital invested and a better service to the people secured, and therefore they insist that pooling should be legalized. Well, if rates are to be made so inflexibly stable as not to keep pace with the general fall of prices of other commodities—owing chiefly to a vicious financial system—the country does not want such stability in rates. If the price of the property of the producer and shipper must fall on a single gold standard, let railroad property suffer such depreciation alike with all other property, and not be permitted to fatten upon the misfortunes of an already oppressed people at the hands of a moneyed oligarchy.

There are two sides to this rate business; the one advocated by the railways seems to be wholly on the side and in the interest of the railways. It is all very well to insist on a fair return on the investment made in railroad property, but the rights of the shippers and producers should not be entirely ignored. The people were not consulted when the indebtedness which burdens the railroads was incurred. Are they not to be consulted when it comes to fixing freight rates with which their property is to be burdened? Is the freight which they must pay any less a tax because it is collected in the interest of private parties? From whence comes this power to tax the people on the part of these corporations, if it does not come from the people? The power of eminent domain is

the power to destroy, is the power to take property for public use, and is one of the greatest prerogatives of government. It has been delegated by the people to the railways. The right to collect tolls and taxes is another power equally as great; it, too, the people have delegated to the railways.

Are the people not to be consulted first as to the extent they shall be taxed in return for all these great franchises granted, rather than burden the traffic with all it will bear? Is a policy which bases these rates on the true valuation of the railroad property not the best policy for both the carriers and the shippers, inasmuch as lower rates will in the long run bring greater returns than higher rates; and is it not wiser to intrust this great power to an impartial board who may and will act in the interest of all concerned than in the hands of interested parties who can see but one side of this question? If we are to have a commission to pass on such rates as the railroad pool may suggest, why not give this commission the primary power to fix rates in the first instance instead of conferring upon it the homeopathic function of an advisory board? Why, unless the railroads carry in all their well-sounding propositions, the ulterior design to exercise a controlling voice in the matter of fixing rates so that they may be high enough to suit their purposes without reference as to how they may affect the people?

Let us see what the courts have said on this subject. In the case of *Ames Adel vs. The Union Pacific Railway Company*, decided in 1894, "the Nebraska rate case," Judge Brewer used the following language:

What is the test by which the reasonableness of rates is determined? This is not yet fully settled. Indeed, it is doubtful whether any single rule can be laid down, applicable to all cases. If it be said that the rates must be such as to secure to the owners a reasonable per cent on the money invested, it will be remembered that many things have happened to make the investment far in excess of the actual value of the property—injudicious contracts, poor engineering, unusually high cost of material, rascality on the part of those engaged in the construction and management of the property.

These and many other things, as is well known, are factors which have largely entered into the investment with which many railroad companies stand charged. Now, if the public was seeking to take title to the railroad by condemnation, the present value of the property and not the cost is that which it would have to pay. In like manner it may be argued that when the legislature assumes the right to reduce rates, the rates so reduced can not be adjudged unreasonable, if under them there is earned by the railroad company a fair interest on the actual value of the property. It is not always easy to determine the value of railroad property, and if there is no other testimony in respect thereto than the amount of stock and bonds outstanding, or the construction account, it may be fairly assumed that one or the other of these represents it, and computation as to the compensatory quality of rates may be based upon such amounts.

From this decision we must infer that, if the actual value of the railroad property can not be ascertained by any direct means, the amount of stock and bonds may be followed as a guide, or the construction account, and that, at all events, a reasonable return upon the actual value of the railroad property is all the owners can require.

Recurring to railroad pooling, I beg to quote from a speech of Hon. Allen Fort, railroad commissioner from the State of Georgia, delivered in the convention of railroad commissioners held in Washington, May, 1894, as follows:

I think the point we want to find in this question of pooling is in the arguments with which the road would induce us to approve of it. It means the practical abolition of competition in all branches of transportation at the points of competition. I wish it understood that in discussing trusts and monopolies I am not speaking of them in the sense in which the terms are

often used, to deprive capital of its just rights, for corporate capital should be considered as sacred as that of the individual. But we do know that in this age, in this day, at this hour, if there is one particular thing above another from which this country is suffering it is monopoly, it is trusts. It is a day of trusts; consequently we find it a day of distrusts. And yet shall we legalize one of the most pernicious forms in which the trust can be made by recommending legalized pooling at points of competition? It seems to me that we will abandon one of the greatest principles that we hold on this subject of regulation.

In my State it would be impossible to permit pooling, because our constitution prohibits it in expressed terms, in terms even stronger than the act of Congress. I could not, with my convictions upon the subject, be willing to recommend to this convention a departure from what I believe to be a sound principle, founded not only upon the constitution of the State of Georgia, but those of other States. I have read with interest the very able report submitted upon this question, and I fail to agree with my learned friend who thinks this clause in the act has no place there, that it is incongruous with it. To my mind it seems to be there logically, to be necessary to the very spirit of the law. The legalizing of pooling would tend to destroy the very competition which now exists among the railroads and which has been of so much advantage.

The Interstate Commerce Commission should be invested with the rate-making power, the power to make a maximum and minimum rate. If it has not that power, Congress should confer it. Whatever is beyond the maximum or below the minimum would then be illegal.

They would not at the points of competition fix the rate. They would not have time, with all their indefatigable industry, to determine whether or not the rates upon the thousands of articles upon which rates are fixed are just, or to fix the rates at the thousands of places in this great country; but if they had the rate-making power, the law would be almost self-executory. You could go to the courts, they could complain to the commission of the violation of rates that had already been established as just and reasonable, whereas they only determine now upon the rate fixed by the railroad companies themselves.

That would remove the difficulty in regard to pooling; but if we legalize it, if we take this step to give the sanction and approval of law to so convenient and common a means of combination, of promoting monopoly, we will strike down, to my mind, one of the greatest securities that the people have under railway regulation. It is in vain to talk of the facility with which they can practice a fraud upon the public by giving an advantage to this one or an advantage to this commodity or that locality, secretly or illegally. The opportunity would be equally as great if pooling were legalized. The very men who are regardless of the law and of the rights of his competitor would be equally regardless of their duty to other railroads and to the public, and still continue to the same extent to deceive and impose upon each other.

Why, it is a common thing to hear of these railroads complaining against each other. Take the Southern Railway and Steamship Association and I doubt not the Western Traffic Association and others throughout the land. They are great pooling combinations, in my opinion illegal (but that is not here for discussion now, but reduced to the last analysis that is what they are), and yet we find them constantly complaining of violations of these among themselves.

So I say, if their experience in this respect goes for anything, we can not evade the troubles that it is supposed will be gotten rid of by the legalizing of pooling.

It seems to me that if Congress repeals section 5 of the act to regulate commerce, it will have removed the last great barrier which now protects the people against corporate greed, and will have set a pernicious and powerful precedent for the legalizing of private socialism, which is a thousand times worse than outright state socialism, in that it permits combinations and trusts of private capital under a monopoly, primarily at least, for private gain, and thus sets a precedent most dangerous and far-reaching in its consequences by encouraging similar trusts in every private enterprise where private capital may choose to combine under the pretext of self-preservation, thus opening wide the flood gates of private avarice and corporate power.

Nothing would do more to hasten the change of our economic conditions from the competitive system to the collective system, and would furnish not only a powerful argument for the wildest

socialist, but force the people to the adoption of state socialism in self-defense. If pooling among railways, who are quasi public functionaries, can be sanctioned, then, indeed, the legalizing of all private trusts would not only be consistent, but inevitable, and we might as well abandon the competitive idea in our economic conditions and go over, horse, foot, and dragoon, to private socialism of the worst form and quit caviling about oil trusts, sugar trusts, and coal trusts. Indeed, these exist principally through the discrimination and rebates made by trunk railways now, and would not only flourish more under a railroad pool, but receive a new impetus and legal status from the legalized railway pool,

I venture the opinion that the American people would never approve such a step and would soon take one in an opposite direction leading to state socialism, as of the preference between private and public socialism there can be little hesitation in favor of the latter. The question whether the classes or the masses should have the benefit of legal combination would soon resolve itself in favor of the masses, and it would not be long before every public enterprise, if not every private one, would fall under governmental control—revolutions do not travel backward—and the dreaded paternalism which now disturbs our dreams would be a reality. Whatever action Congress may take, let it not fall into this pitfall.

Such a course would indeed legalize the methods of socialism without tolerating its claim for equality of opportunity. It would result simply in a benefit to a privileged few at the expense of the many, and this under legal sanction. The great private trusts which are now outlawed, at least by public opinion, would be legally sanctified, and their methods of oppression upon labor and their brigandage upon commerce become a public virtue. While the trend of the times is indeed toward combination, let us at least not encourage it with legal approval in this direction.

I come now to the discussion of the question of Government ownership of the railways. If I had to choose between private ownership with legalized pooling and Government ownership, I would certainly prefer the latter, but I am not driven to this alternative, and still have the choice between regulation and Government ownership. But let us fairly scrutinize the latter without taking spasms at its mere mention. A great many of our people believe that it is the only solution of the railroad problem, and one of the great political parties of this country has embodied it as a plank in its national platform, and many of the brightest of our publicists openly advocate it in the leading American magazines and newspapers. Even some railroad men indorse it—it is true, more from a selfish standpoint—and its discussion has assumed a wide scope and an earnest character among all classes of our people.

Let us look first and see what are the relations of the governments of the world to the railroads. I can probably present this matter more strikingly and fully by reproducing a report from our Interstate Commerce Commission, under date of August 27, 1894, and which at the time was referred to the Senate Committee on Interstate Commerce. It is as follows:

The Vice-President presented the following collection of statements from the Chairman of the Interstate Commerce Commission relative to foreign railway ownership and operation:

INTERSTATE COMMERCE COMMISSION,
Washington, D. C., August 27, 1894.

SIR: In part compliance with the resolution of the Senate passed August 24, 1894, relating to railroad ownership by foreign governments, I have the

honor to transmit herewith a collection of statements contained in various publications treating of foreign railway ownership and operation. The commission will hereafter furnish the Senate with such further information on the subjects embraced in the resolution as may be obtainable.

Respectfully,

WM. R. MORRISON, *Chairman.*

The PRESIDENT OF THE SENATE.

GOVERNMENT OWNERSHIP OF RAILROADS.

This subject is treated in this paper under the following heads:

1. Relations of Governments to the railroads of the world.
2. The foregoing data tabulated.
3. Comparison of freight and passenger rates on government-owned railroads and on roads within the United States.
4. Views of various writers on the subject.

(1) *Relation of governments to the railroads of the world.*

ARGENTINE REPUBLIC.

The Government owned about 620 miles of railroad in or about the year 1893. In that year the total mileage was 8,053 miles.

AUSTRALASIA.

About five-sixths of the mileage in Australasia belongs to the various colonial governments. These roads were built principally with moneys derived from large loans negotiated by agents-general, and their value forms one of the principal assets for the public debt. The management of the Victorian and New South Wales railways having resulted in various abuses, they were, about the year 1884, placed under the direct management of a nonpartisan commission. In addition to the management of existing roads, this commission has charge of the construction of new lines.

AUSTRIA-HUNGARY.

In Austria about 40 per cent of the railway mileage is owned and about 73 per cent is operated by the State. Upon the expiration of charters not exceeding ninety years, the lines, lands, and buildings of the companies revert to the Government, but the equipment remains the property of the private owners. Before a railway is opened it must be approved by the minister of commerce. The tariffs of State roads are fixed by the Government. Those of the companies are subject to revision by the Government every three years, and the Government has power to reduce rates if the net earnings exceed 15 per cent on capital.

BELGIUM.

About three-fourths of the railway mileage in Belgium is owned and operated by the State. The roads not owned by the Government will, under the terms of their charters, ultimately revert to it. Railway affairs are administered by a Government "department of railways, post-offices, and telegraph." The laws regulate tariffs. Railways are exempted from taxation.

BRAZIL.

The State owns about one-fourth of the total railway mileage, but this one-fourth does about one-half of the entire business.

CANADA.

About one-tenth of the total mileage of about 15,000 miles is owned and controlled by the Government. For the year 1892 the operation of the Government lines resulted in a loss of over \$600,000.

CAPE OF GOOD HOPE (ENGLISH SOUTH AFRICA).

All of the railroads are owned by the Government, except one of about 192 miles in Cape Colony.

CHILE.

About one-third of the railway mileage is owned by the State.

COLOMBIA.

The Government has granted subsidies to the railways with the understanding that, at the end of a certain period, they will become the property of the Government.

DENMARK.

The State owns and controls about three-fourths of the total mileage, which in 1892 was 1,289 miles.

EGYPT.

The railway system, covering about 1,225 miles, belongs to the Government.

FRANCE.

At the present date by far the larger portion (about five-sixths) of the French railway system is operated by private companies, each company serving a definite territory and being comparatively free from the competition of other lines. But the railroad properties are ultimately to become the property of the Government. This system is a mixed one of State and private ownership. The competition of the private lines compelled the Government to lease some of the State lines to the former. On account of the necessity for great additional taxation, the scheme of nationalization of the railway system was abandoned in 1883.

GERMANY.

In Germany nearly 90 per cent of the railway mileage is owned by the Government. Under the law, the Government is required to manage the railways in the interest of general traffic as a single system. It may cause the construction and equipment of roads and enforce uniform traffic and police regulations. Even the few private railways are controlled by State boards.

GREAT BRITAIN AND IRELAND.

The Government does not own any of the railways. There are stringent regulations provided by law and administered by the railway commission and board of trade. New lines cannot be constructed without the sanction of Parliament.

The act of 1844 provided that the Government should have the right to acquire any railroad constructed after its date by purchasing the same for a sum equal to twenty-five years' purchase of annual divisible profits, estimated on the average annual profits for the three years preceding the date of purchase. If, however, the average profits for such three years has been less than 10 per cent, and the company thought the purchase price based thereupon was inadequate because of the future prospects of the property, the matter was to be referred to arbitration. Under this law, however, the Government was not empowered to take branches or extensions of old lines constructed after the date of the act unless it took the whole system, if the company required it to do so.

This law, so far as it relates to the Government acquisition of railroads, has never been acted upon. Twenty-three years later (in 1867) a commission appointed by the Government to report on the subject stated: "We are of the opinion that it is inexpedient at present to subvert the policy which has hitherto been adopted of leaving the construction and management of railways to the free enterprise of the people, under such conditions as Parliament may think best to impose for the general welfare of the public."

GREECE.

The railways of Greece are nearly all owned and altogether managed by private companies.

GUATEMALA.

The Government owns and operates 30 of the 126 miles of railway in this country.

HOLLAND.

One-half of the railways belong to the State, but that one-half is worked by a private company.

INDIA.

Two thirds of the railways belong to the Government, and the other one-third, owned by private companies, is subsidized.

ITALY.

Italy has tried both State and private railroads, and has come to the conclusion that it is not advantageous for the State to own and operate the railways. The result was a reorganization of the whole railway system. Under the present system private companies operate the State roads under contract with the Government. The contracts run for sixty years, the Government or the companies having the option to terminate them at the end of twenty or forty years upon a two-years' notice.

JAPAN.

Only a small per cent of the railway mileage is owned by the Government. When a charter is granted to a private company for a limited period under the ordinance of 1887, the Government has the right at its expiration to purchase the property at a price calculated upon the average price of the shares during the five years previous to the date of purchase. Prior to 1875 there appears to have been State, prefecture, and village railroads in Japan. State roads are maintained at national expense, but their regulation and repair are in the hands of the prefectures through which they pass. Prefecture roads are maintained by equal contributions from the General Government and particular districts or prefectures. Village roads serve petty local districts, and are maintained at their expense.

MEXICO.

The Mexican railways are owned and operated by private corporations. Nearly all have been built by American companies. But the charters granted to most of the railway companies contain a proviso allowing the Government to purchase the railways after the lapse of a named number of years.

NICARAGUA.

The few roads of this country are owned by the State.

NORWAY.

Owing to the topographical difficulties of the country, Norway has never, except a short line of 42 miles, had any other than State railways.

PARAGUAY.

Paraguay owns its railways.

PERU.

The railways are operated by private companies.

PORTUGAL.

About 62 per cent of the mileage is owned and operated by private companies. Most of them, however, have been aided by the Government through concessions and subsidies or guaranties. Where aid has been granted it has always been conditioned upon the roads reverting to the Government in ninety-nine years.

RUSSIA.

The Government is stated to own and operate about 40 per cent of the railway mileage. Nearly all the railways owned by private companies have received subsidies from the Government. The State is represented on boards of directors, and all expenditures, declarations of dividends, etc., must be recommended by the directors and approved by the Government.

SPAIN.

Mileage owned and operated by private companies.

SWEDEN.

In 1892 about one-third of the total mileage of 5,254 was owned by the State.

SWISS CONFEDERATION.

All the lines of railways in this country belong to private companies, but the Government has direct supervision over them.

TURKEY.

The railways of Turkey all belong to private companies.

UNITED STATES.

The National Government does not own or operate any of the railways. It is stated that several of the States have tried ownership in a limited way. Illinois constructed a road at a cost of \$1,000,000, but disposed of it for \$100,000; Indiana had a similar experience; Georgia owns a railroad, but has found it expedient to lease it to a private company; Pennsylvania constructed a railroad from Philadelphia to Columbia, but subsequently sold it. Massachusetts, Michigan, and several other States tried the experiment without success. (Kirkman.)

URUGUAY.

There are no State railways in Uruguay.

NOTE.—The above statements are based upon the Consular Reports, Mulhall's Dictionary of Statistics, Reports of the Interstate Commerce Commission, Statesman's Year Book, 1894, Reports of Bureau of American Republics, and various other authorities hereinafter cited.

(2) The foregoing data tabulated.

A table showing to what extent governmental ownership and operation of railways obtains in the principal governments of the world:

Country.	Year.	Total mileage.	Mileage owned by State.	Mileage owned by private companies.	Mileage operated by State.	Mileage operated by private companies.	Per cent of mileage owned by State.	Per cent of mileage owned by private companies.	Per cent of mileage operated by State.	Per cent of mileage operated by private companies.
Argentina.....	1893	8,053	620	7,433	620	7,433	7.70	92.30	7.70	92.30
Australasia.....	1893	12,660	10,619	2,041	10,619	2,041	83.88	16.12	83.88	16.12
Austria-Hungary.....	1893	17,619	7,044	10,575	12,923	4,696	59.98	60.02	73.35	26.65
Belgium.....	1893	2,810	2,018	792	2,018	792	71.81	28.19	71.81	28.19
Brazil.....	1892	6,375	1,700	4,675	1,700	4,675	26.67	73.33	26.67	73.33
Canada.....	1892	14,588	1,459	13,129	1,459	13,129	10	90	10	90
Cape of Good Hope.....	1892	2,444	2,252	192	2,252	192	92.14	7.86	92.14	7.86
Chile.....	1892	1,715	685	1,030	685	1,030	39.94	60.06	39.94	60.06
Colombia.....	1894	240	-----	240	-----	240	-----	100	-----	100
Denmark.....	1892	1,289	992	297	992	297	76.96	23.04	76.96	23.04
Egypt.....	1892	1,225	1,225	-----	1,225	-----	100	-----	100	-----
France.....	1893	*21,618	13,652	17,966	3,652	17,966	16.89	83.11	16.89	83.11
Germany.....	1892	23,971	23,848	3,123	24,144	2,827	88.42	11.58	89.52	10.48
Great Britain and Ireland.....	1893	20,325	-----	20,325	-----	20,325	-----	100	-----	100
Greece.....	1893	568	92	476	-----	568	16.20	83.80	-----	100
Guatemala.....	1894	126	30	96	30	96	23.81	76.19	23.81	76.19
Holland.....	1891	1,630	873	757	-----	1,630	53.56	46.44	-----	100
India—British.....	1893	*8,042	12,028	6,014	12,028	6,014	66.67	33.33	66.67	33.33
Italy.....	1890	+8,106	+5,272	+2,834	-----	8,106	65.04	34.96	-----	100
Japan.....	1891	1,221	55	1,166	55	1,166	4.50	95.50	4.50	95.50
Mexico.....	1893	6,900	-----	6,900	-----	6,900	-----	100	-----	100
Nicaragua.....	1894	122	-----	122	-----	122	-----	100	-----	100
Norway.....	1893	971	929	42	929	42	95.67	4.33	95.67	4.33
Paraguay.....	1893	156	-----	156	-----	156	-----	100	-----	100
Peru.....	1893	950	-----	950	-----	950	-----	100	-----	100
Portugal.....	1891	1,334	505	829	505	829	37.86	62.14	37.86	62.14
Russia, including Finland.....	1891	19,640	8,003	11,637	8,003	11,637	40.75	59.25	40.75	59.25
Spain.....	1893	6,708	-----	6,708	-----	6,708	-----	100	-----	100
Sweden.....	1892	5,254	1,770	3,484	1,770	3,484	33.69	66.31	33.69	66.31
Switzerland.....	1892	2,082	-----	2,082	-----	2,082	-----	100	-----	100
Turkey in Europe.....	1892	904	-----	904	-----	904	-----	100	-----	100
Turkey in Asia.....	1892	974	-----	974	-----	974	-----	100	-----	100
United States.....	1893	176,461	-----	176,461	-----	176,461	-----	100	-----	100
Uruguay.....	1893	993	-----	993	-----	993	-----	100	-----	100

* Includes 1,957 miles of local interest.

+ Includes 96 miles, owned jointly by State and private companies.

NOTE.—Where information of the apportionment of mileage operated between the state and private companies could not be obtained, it has been assumed that each operate the mileage which they own.

From this it appears that the following countries do not own or operate railways, viz: Colombia, Great Britain and Ireland, Mexico, Paraguay, Peru, Spain, Switzerland, Turkey, United States, and Uruguay—10.

The following Governments own and operate practically all their railways, viz: Egypt and Nicaragua—2.

The following Governments own and operate some of the railways, viz: Argentina, Australasia, Austria-Hungary, Belgium, Brazil, Canada, Cape of Good Hope, Chile, Denmark, France, Germany, Guatemala, India, Japan, Norway, Portugal, Russia, and Sweden—18.

The following Governments own part of the railways, but do not operate any, leasing all the present mileage to private companies, viz: Greece, Holland, and Italy—3.

Though not claimed to be accurate, it is believed that the foregoing summary presents an approximately correct statement of the relation of the various Governments to the railways.

The total railway mileage of the world is estimated in a recent issue of *Archiv für Eisenbahnwesen* at 403,416 miles on December 31, 1892.

(3) *Comparison of freight and passenger rates on Government-owned roads and on roads in the United States.*

The freight charges on the Australasian railways are considerably greater than on the lines in the United States. It is said, however, that there are circumstances which should be taken into consideration in comparing the charges of the two countries. The people here, nevertheless, are constantly clamoring for the reduction of the rates. The farmers in Victoria insist that it will not pay them to grow grain unless they can get a reduction of fully 50 per cent on the present rates.—*Consular Reports*, No. 97.

A word may be required as to American rates. No doubt we in Australia will never be able to obtain rates as low as those that prevail in the United States, our conditions being radically different; but the extraordinary thing is that the assertion should be persisted in that our Victorian rates are lower than those that are charged in America. The force of mendacity could scarcely further go. In one sense, there are no American rates to quote. There are a thousand and one railways in America, and each line has its own schedule, and any fancy list can be prepared.

The inquirer can only deal with averages, and taking averages there is no doubt possible. The current number of the *Fortnightly Review* is tolerably accessible to most people, and the inquirer has but to open the article by Mr. J. S. Jeans on the railway subject, and he will find the allegation that freights on the United States lines are the lowest in the world. Mr. Jeans adds: "There is no need for any controversy on this point. The fact is set out in the clearest possible light in the published accounts of the principal American railways. The Pennsylvania system may be taken as a typical case. Over a large portion of this vast system—the largest and most important on the face of the globe under one designation and control—the average ton-mile rate in 1890 was less than a farthing per ton per mile. The average ton-mile rate for the whole system was three-tenths of a penny. That is to say, that throughout this great organization the average for goods of all classes, first-class goods, second class, and so on, was just over a farthing per ton per mile, while in Victoria the average for all classes would be more like 3d. per ton per mile; and it is obvious that wheat and similar low-priced goods may be carried over the Pennsylvania lines at rates which appear to us to be nominal." * * * Still, when the average American rate for wheat is under one-fourth of a penny per ton per mile, and the average Victoria rate is 1d. per ton and over, the handicap appears to be excessive. (Extract from the *Argus*, published in the Province of Victoria, as contained in *Consul-General Marratta's* report of May 10, 1894, *Consular Reports*, Volume XLV, No. 167, page 579.)

The freight rates in the United States, are, in general terms, only five-eighths of those charged on the continent of Europe, and a little less than one-half of those which prevail in Great Britain.—*Gen. Horace Porter, North American Review*, 1891, volume 153, page 718.

The transportation charges in Russia are 40 per cent higher than in America. Working expenses there are 75 per cent of the gross receipts.—*Consular Reports*, volume 26, page 350, 1888.

Mulhall gives the working expenses at 57 per cent of gross receipts.

The following table furnishes a comparison of average passenger rates per mile:

[Gen. Horace Porter, *North American Review*, page 718, volume 153, 1891.]

Country.	First class.	Second class.	Third class.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
United Kingdom.....	4.42	3.20	1.94
France.....	3.86	2.86	2.08
Germany.....	3.10	2.32	1.54
United States.....	2.12		

In Paraguay the first-class rate for passengers is 4½ cents.—*Consular Reports*, volume 29, page 644, 1889.

The railway passenger rates in Great Britain may be taken generally as 4, 3, and 2 cents per mile for the first, second, and third classes, respectively.—*Consular Reports*, volume 40, page 280, 1892.

Comparative summary showing average rates per mile for passengers and freight in various countries.

[Mulhall and Interstate Commerce Commission Statistics of Railways in the United States, 1888.]

Country.	Passengers (pence per mile).			Freight (pence per ton per mile).
	First class.	Second class.	Third class.	
United Kingdom.....	2.1	1.6	1	1.40
France	2	1.5	1	1.10
Germany.....	1.5	1.1	.8	.82
Russia.....	1.8	1.4	.8	1.20
Austria.....	1.9	1.4	.9	1.15
Italy.....	1.8	1.3	.9	1.25
Spain.....	2.1	1.6	1	-----
Portugal.....	1.8	1.4	1	-----
Sweden.....	1.5	1.1	.8	1.60
Norway.....	.8	.5	.2½	1.20
Denmark.....	1.6	1.1	.8	1.44
Holland.....	1.6	1.3	.8	.78
Belgium.....	1.2	.9	.6	.80
Switzerland.....	1.9	1.3	1	1.65
Greece.....	1.4	.9	.7	-----
Turkey.....	2.9	2.6	1.4	-----
Canada.....	.9	-----	-----	*.51
United States.....	1.17	-----	-----	*.50

*1888.

NOTE.—Double the above figures to obtain rate in cents.

Table showing percentage of working expenses to gross receipts and percentage of interest paid on capital invested.

Country.	Percent- age of work- ing ex- penses.	Interest on capital.	Country.	Percent- age of work- ing ex- penses.	Interest on capital.
	<i>Per cent.</i>	<i>Per cent.</i>		<i>Per cent.</i>	<i>Per cent.</i>
United Kingdom.....	52	4.1	Switzerland.....	53	4.1
France.....	52	3.8	Roumania, etc.....	60	2.7
Germany.....	54	5.1	Europe.....	54	3.7
Russia.....	57	5.3	United States.....	70	3.1
Austria.....	56	3.1	Canada.....	70	1.7
Italy.....	65	2.5	Spanish America.....	67	1.6
Spain.....	44	4.4	Japan.....	43	3.1
Portugal.....	43	3.3	India.....	59	5.2
Sweden.....	62	2.9	Australia.....	63	3.3
Norway.....	70	1.8	South Africa.....	52	4.3
Denmark.....	86	1.2	Algeria.....	70	1.6
Holland.....	54	2.9	Egypt.....	46	4.1
Belgium.....	52	4.6	The world.....	62	3.2

Only India and Germany earn over 5 per cent on capital, the average for the world being 3½ per cent. There are 13 countries earning over the average and 11 less than the average. (Mulhall.)

Rates and cost of carriage in the United States for the years ending June 30, 1893, 1892, 1891, 1890, 1889, and 1888.

[Report on Statistics of Railways in the United States for year ending June 30, 1893, page 63.]

Item.	1893.	1892.	1891.	1890.	1889.	1888.
Revenue per passenger per mile.....	<i>Cents.</i> 2.108	<i>Cents.</i> 2.126	<i>Cents.</i> 2.142	<i>Cents.</i> 2.167	<i>Cents.</i> 2.165	<i>Cents.</i> 2.349
Average cost of carrying 1 passenger 1 mile.....	1.955	1.939	1.910	1.917	1.993	2.042
Revenue per ton of freight per mile.....	.878	.898	.895	.941	.922	1.001
Average cost of carrying 1 ton 1 mile.....	.579	.582	.583	.604	.593	.630

The railway mileage in the United States on June 30, 1893, was 176,461.07 miles.—*Report on Statistics of Railways in the United States for the year ending June 30, 1893, page 11.*

Reported cost and value of railway properties in the United States for the year ending June 30, 1893 (161,353.07 miles of line represented).

[Report on Statistics of Railways in the United States for the year ending June 30, 1893, page 64.]

Item.	Amount.	Increase.
ASSETS.		
Cost of road.....	\$8,415,491,543	\$215,398,981
Cost of equipment.....	522,054,217	32,063,936
Stocks owned.....	637,107,244	22,832,201
Bonds owned.....	336,712,255	55,632,352
Cash and current assets.....	403,979,166	*8,596,219
Materials and supplies.....	75,755,170	918,508
Sinking fund and sundries.....	†127,327,910	3,192,898
Miscellaneous.....	753,836,856	*13,638,259
Total.....	11,272,264,361	307,804,398
LIABILITIES.		
Capital stock.....	4,630,457,481	51,886,022
Funded debt.....	5,266,318,961	170,368,600
Current liabilities.....	604,248,946	70,379,553
Accrued interest on funded debt not yet payable.....	26,415,861	*404,486
Miscellaneous.....	521,601,002	20,877,838
Profit and loss.....	223,222,110	*5,249,128
Total.....	11,272,264,361	307,804,398

* Decrease.

† Sinking fund, \$83,383,434; sundries, \$43,944,476.

(4) *Views of various writers.*

The policy of giving the control of the railways to the State (in Australia) is very seriously questioned in many quarters. One of the principal objections to it is the amount of patronage it controls, and the liability to use such patronage for political purposes. Another objection is that under the State system the expenditures are greater and the receipts smaller than when under the management of private companies. It is urged, however, by those who support the State system that the reason Government-owned railways experience so much difficulty in making fair returns for the amount of capital invested is that as soon as a profit is shown the public insists upon concessions in rates or increased facilities, both of which are practically an amelioration of taxation. The difference between a State and a private railway is explained on the ground that as traffic develops, in one case, the public get immediate benefit from lower charges and greater facilities, and in the other, the shareholders obtain a larger dividend at the end of each year's working.—*Consular Reports, 97.*

The railways of Australia practically represent the assets for the national debts of each colony, and to-day would probably realize, if they were to be disposed of, the full amount of the national indebtedness. It is, however, improbable that the people concerned will ever allow these great possessions to pass into private hands, believing that they should be retained to open up and develop the resources of the colonies and aid in the material progress of Australia.

It is agreed, however, that to a certain extent the railway administration should be separated from politics. The construction and direction of new lines may well be left to Parliament to determine, but the management of the lines and control of the railways' daily working, it is held, are matters for skilled and capable railway managers, untrammelled by the exigencies that political considerations would often cause to influence the political mind.—*Consular Reports*, volume 45, No. 167, page 579.

[Extracts from *The Railroad Problem*, Adams, 1887.]

The Government of Belgium, meanwhile, in its turn, pressed by the competition of the private lines, found itself compelled to work its roads on regular "commercial principles." In order to get business it made special rates, and, if necessary, entered into joint-purse arrangements with its adversaries. (Page 99.)

Should the Belgian Government now adopt a policy of expansion and proceed to acquire the remaining lines of the system, it will enter upon the very doubtful experiment of exclusive State management. (Page 100.)

Meanwhile the whole drift of discussion tends away from the private ownership of French railroads and reliance on competition among them toward a closer connection between the railroads and the Government. (Page 108.)

Indeed, those managing the French railroad companies look with simple astonishment on the wild fluctuations in the railroad tariffs incident to the American method of operation, and they do not hesitate to say that if any similar outrages were perpetrated on the French people and business public by them the question of State ownership of railroads would immediately assume a new shape. Such proceedings would not be tolerated. (Page 108.)

The English, the Belgian, the French, and the German are the four great railroad systems. With many points in common, each has peculiar features deserving of careful study. In their political relations they are divided into two groups by a broad line of demarcation. On the one side of that line are the systems of the English-speaking race, based upon private enterprise and left for their regulation to the principles of *laissez faire*, the laws of competition and of supply and demand. On the other side of the line are the systems of continental Europe, in the creation of which the State assumed the initiative, and over which it exercises constant and watchful supervision. In applying results drawn from the experience of one country to problems which present themselves in another, the difference of social and political habit and education should ever be borne in mind. Because in the countries of continental Europe the State can and does hold close relations, amounting even to ownership, with the railroads, it does not follow that the same course could be successfully pursued in England or in America. The former nations are by political habit administrative, the latter are parliamentary; in other words, France and Germany are essentially executive in their governmental systems, while England and America are legislative. Now, the executive may design, construct, or operate a railroad; the legislative never can. A country, therefore, with a weak or unstable executive, or a crude and imperfect civil service, should accept with caution results achieved under a government of bureaus. Nevertheless, though conclusions can not be adopted in the gross, there may be in them much food for reflection. (Pages 115 and 116.)

Uncontrolled competition between railroads has been abandoned. The tendency of events is all in one direction. It varies simply in degree and as it is affected by the political habits and modes of thought of the nationalities. In one country the direct principle of exclusive State ownership is accepted, while in another a system of close public supervision is assuming shape. Thus supervision, always increasing in efficiency, would seem to be the practical Anglo-Saxon solution of the problem, while upon the continent of Europe that solution is abandoned in favor of a purely governmental system. The paths diverge, but the end is the same—the restraint of an excessive competition resulting in a perpetual chaos. Order is evolved in different ways, but it is evolved at last. (Pages 213 and 214.)

See *An Investor's Notes on American Railroads*, Swann, 1887, pages 124-129, and *The Railroad Question*, Larrabee, 1893, page 409, et seq.

[An extract from *Railway Practice*, Alexander, 1887, pages 46-50.]

As to the argument that our own Government manages our postal affairs and generally with honesty and efficiency, I would say that there is such a radical difference between the relations to trade and commerce of the postal

service and freight transportation that no parallel can be drawn. Letters and papers have no commercial value. Postal rates are uniform for all distances. No commercial rivalries are affected by them, and little money is involved in the operations of the Department but the salaries of the employees. But in the transportation of freight, and the rates charged upon it, every branch of agriculture, manufacture, and commerce, with their infinitely diversified rivalries, is intensely, vitally interested. Rates can not be uniform for all distances and nearly all articles, but there must be an infinite and frequently varying adjustment, or discrimination, and adaptation of rates to circumstances. * * * As to Professor Ely's reference to the Prussian governmental railroad management, * * * Prussia is small and finished. We are very large and growing. There it is a recognized governmental duty to look after and take care of the people. Here the people take care of themselves, and it is our theory that free competition will work out the best results possible to human nature.

[An extract from *The Railways and the Republic*, Hudson, 1887, pages 326, 327.]

There seems to be a general and well-founded belief that, while the management of the railways by the Government might remove many of the evils of corporate control, it would certainly, in our political system, cause others as great or greater. There are still some very respectable advocates of this system, who allege that it has proved a success in Europe. But the example of European railways can not be cited as conclusive for this country. The military considerations which govern the leading governmental railways in Europe are of no weight in this country, while the commercial purposes which are primary here are there secondary to the rapid concentration of troops at strategic points; nor does a comparison of their financial results with those of the American railways commend the plan. In Belgium the ratio of expenses to earnings is somewhat less on the state railways than on those of private companies, while in Germany the private railways have a slight advantage in this respect.

But, making allowance for the business which the Governments of these countries can put on their own roads at their own rates, the superiority of the private railways is marked, and confirms the theory, generally accepted in England and America, that in any business private enterprise, with free competition, furnishes more economical and efficient service to the public than the ownership and management by the State.

[Extracts from *Railway Problems*, Jeans, 1887.]

In all legislation that has taken place in reference to British railways since 1854 the possible ultimate acquisition of the system by the State has been steadily kept in view. (Page 463.)

If the postal and telegraph systems were properly taken under Government control, there seems much more reason why the railway system should be, since railways are not only used by all, but exercise a power and influence on our social and our business relations that no other single element can claim to do. (Page 457.)

In almost all European nations provision has been made for the ultimate acquisition of the railways as a whole by the nation and for the nation. (Page 456.)

Sir R. Hill gave the following, among other reasons, why railways should belong to the Government:

- (a) A pecuniary gain to the State.
- (b) A gain to shareholders and others in steadiness and security of income.
- (c) Security against Parliamentary contests now so costly.
- (d) A reduction (eventually large) in fares, freight, etc.
- (e) Greater efficiency of management.
- (f) Increased postal facilities. (Page 459.)

[An extract from the *Forum*, volume 5, page 429, 1888, Hadley.]

We know how public business is habitually mismanaged, and there is no instance, even among the foreign countries with the best civil service, of state railroad systems conducted on the American standard of efficiency. But a large section of the public, more or less misled as to the evidence, believes in state railroad ownership and desires to see it introduced into the United States.

[An extract from *The Railways and the Traders*, Acworth, 1891, preface, pages 6, 7.]

Now, I am no foe of government railways. On the contrary, I believe that in countries with a population less self-reliant than our own such a policy is necessary. In a country with a bureaucracy as well trained and as well organized as that of Prussia it may even be desirable. Nay, more, I am not concerned to deny that even here (England) state purchase might do something to bring up the worst railway services more nearly to the level of the

best. But a careful study of the evidence has convinced me that in the long run state control ends in keeping down the best to the level of the worst, and that, taking them for all in all, the private railway companies of England and the United States have served the public better than the government railways of the Continent or of our Australian colonies, and, which is still more to the point, are likely to serve it better in the future.

[Extracts from *The Working and Management of an English Railway*, Findlay, 1889.]

The State purchase of railways would involve an objectionable amount of interference with the industries of the nation and with the character of the people. The Government would become the direct employer of a vast army of men of all classes, from laborers to highly-trained artisans, clerks, and officials. They must come in contact with trades unions, face the question of employer's liability, and all other difficult labor questions which from time to time agitate the industrial community, and at times they would even have to deal with strikes. (Page 235.)

All experience of the working and of the scale of expenditure of government departments is strongly opposed to the belief that so vast and difficult an undertaking as the administration of the railways of the country could be carried on economically and upon sound commercial principles by a department of state. (Page 236.)

It only remains to add that in France, where the experiment of ownership of railways by the State has been tried for many years past on a very considerable scale, an agitation is now growing up, as may be gathered from recent debates in the French Chambers, for the absolute sale of the state railways to private companies, on the grounds that the present system involves a very heavy annual loss to the exchequer, and that any advantages which may be expected to result from the ownership of the railways by the Government are not reaped by the public, but are applied to the furtherance of political objects. (Pages 236, 237.)

In Belgium, where, as before stated, the railways are worked as a department of the State, and the appointment of minister of railways is a political one, the patronage which lies in his gift is well known to be largely exercised for party purposes. Promotion in the service is entirely governed by consideration of the political tendencies of the individuals concerned, and when the minister is a Liberal he will systematically refuse to appoint or promote officials who are known to belong to the Clerical party; while, on the other hand, if a Clerical minister is in office, there is no hope of advancement for Liberals until their friends in turn succeed in power. (Page 237.)

In Germany, where there has been considerable experience of the plan of working the railways as a Government department, the financial result does not appear to be too encouraging. The railway department, it is true, figures in the budget with a large annual profit, but this is only apparent, for the Landtag is every year called upon to vote supplies to be expended on the railways far in excess of the so-called profit, notwithstanding which, loud complaints are heard of the want of sufficient plant for carrying on the working in efficient manner. (Page 237.)

[Extracts from *Railway Rates and Government Control*, Kirkman, 1892.]

The question of Government ownership and management of railroads has not been much discussed in the United States. There seems to be a tacit understanding among practical men that it would not be desirable. The Government itself has studiously discouraged such reference. (Page 236.)

Governmental management lacks spirit, alertness, and a desire to please (page 207). * * * It is nowhere the equal of private effort (page 209). * * * Its effect is to retard improvements, to prevent new enterprises, to lessen the interest of owner and manager in the comforts and conveniences of the people (page 217). * * * It is made up of about equal parts of business and politics, trade and theory, frankness and evasion, knowledge and ignorance, industry and sloth (page 223). * * * It is practiced more or less in many countries, not because the people thought it the best way, but because Government aid was necessary in the first instance to build the roads (page 224).

The highest good that can attach to Government intervention in a country whose people possess commercial spirit or enterprise is to be found in a wisely supervising body, such as the Board of Trade of Great Britain or the Interstate Commerce Commission of the United States. (Page 232, note.)

In no instance has state ownership of railroads answered the expectation of those who advocated it from a belief that rates would be cheapened and facilities bettered thereby. (Page 233.)

The author of our interstate-commerce act (Hon. SHELBY M. CULLOM) found Government ownership and management of railroads in Germany anything but agreeable. He discovered that it greatly increased the number of employees and surrounded the service with tedious and harrassing regulations. (Page 250, note.)

There is [said he] at each station a small army of uniformed employees, who make more fuss about the arrival or departure of a train than one sees in a year's travel in the United States. If American railroads were to employ such a number of men, and pay them the current American rates of wages, the lines could not earn enough to pay them if traffic rates were doubled. * * * In Germany all is fuss and feathers. Every railway employee is a Government official, and there is enough red-tape to weary an American. (Chicago Post, September 24, 1891.) (Page 250.)

[Extracts from Railway Secrecy and Trusts, Bonham, 1890.]

But the power of the State must be clearly confined to supervision and control, and must involve no kind of State ownership or interest for profits. (Page 87.)

In the end, the essential function of a free government is restricted to the guardianship of political and industrial equality, and this guardianship necessarily involves judicial and impartial relations to the subject-matter of control. (Page 87.)

The Government can never secure a free field for competition to all the citizens where it is not disinterested. As well might we expect a judge to decide equally and fairly between litigants, where that judge is an interested party, as to expect a Government to preserve industrial equality where its interests are involved as a participant in profits. This principle does not preclude Government ownership where industrial competition is not a factor. The Government may own a navy without impairing the principle. Such ownership is not for profit. It may own and conduct a post-office; this is for convenience and without profit. For the like reason it may own and conduct an exclusive telegraph system. It has been the owner of vast untenanted lands in the West. They have never been dealt with as a private owner deals with his own property. (Page 88.)

[Extracts from the Report on the Relations of the Governments of the Nations of Western Europe to the Railways, by Simon Sterne, 1887.]

Personal and preferential rates have been so completely eliminated from railway tariffs in civilized European States that it may be said that substantially they no longer exist. (Page 42.)

In one particular, however, the European governments have been more just to the railway companies and more conservative of their interests than we have been in this country. They have coupled supervision and control with the recognition of the right to the undivided occupancy of a field, and have prevented the mere duplication of railways not called for by public necessity, and which had and have their origin solely in the desire to divide a profitable field with another railway. (Pages 42 and 43.)

This report refers to the danger there will be in Government ownership of the railways in the United States from the patronage attending the large personnel employed in railway enterprises.

The inference is drawn therefrom that for any Government like that of the United States, the officials of which are elective and their tenure of office dependent largely upon the popular will, either the ownership of railways or their very effectual control by a central authority would so add to the power and patronage of any political party in office that it would be difficult to displace it, and would therefore be a menace to our form of government. (Page 43.)

Moreover, an impediment to the acquisition ultimately by the Government of the United States of the railways of the country exists in the nature of our institutions themselves, inasmuch as no constitutional power exists on the part of the General Government to acquire these railroads. (Page 44.)

[Extracts from The Railroad Question, Larrabee, 1893.]

The experiment of State ownership and management of railroads has been longest tried in Belgium, and with the best results. With an excellent service, the rates of the Belgium State roads are the lowest in Europe. Their first-class passenger tariffs are, next to the zone tariff recently adopted on the State roads of Hungary, the lowest in the world, and are, for the same distance, lower than those of American roads. (Page 409.)

In France and Prussia the State service is superior to that of the private companies. (Pages 409 and 410.)

Ex-Governor Larrabee, in this work, also points to the demoralizing influence in case of Government ownership of railroad employees in politics. (Page 412.)

Mr. T. B. Blackstone, president of the Chicago and Alton Railroad Company, declares in favor of Government ownership of roads on the ground that by this means the railroads could dispose of their property to the Government at a price representing several times their original cost, or several times the cost of duplication. (Page 413.)

[Extracts from Railroad Transportation, Hadley, 1893.]

In judging the railroad policy of Belgium by its results, all must unite in admitting that they are in many respects extraordinarily good. What their average rates are we have already seen. The passenger rates are lower than anywhere else in the world, except, perhaps, on some East Indian railroads. The freight rates are much lower than anywhere else in Europe. Nominally, they are about the same as in the United States. Practically, they are lower for almost any given service, because Belgium does not have the enormous long-distance traffic which brings down the average in the United States. (Page 216.)

While not withholding the freest praise from the Belgium system, we may fairly ascribe much of its success to other causes than enlightened State management or deliberate public policy. (Page 218.)

There is a strong popular feeling, to a large extent unsuspected by those in authority, in favor of Government ownership of railroads as a system. No one can have much to do with the more thoughtful workmen without finding how strong that feeling is and what hopes are based upon it. The fact that the question is not more under discussion must not blind us to the fact that forces are at work which may prove all but revolutionary when the question actually does come up under discussion. If it be true that Government railroad ownership would be a most serious political misfortune for the United States, we must be prepared to meet the danger with our eyes open. Unless we are able to face it intelligently and to show reason for our action, the widespread feeling in its favor will prove too strong for us. It may not come for many years, but the lessons of the Granger movement show plainly enough what forces will lie behind it when it does come. (Page 258.)

MISCELLANEOUS.

The people of England, proud of their commercial ability, and jealous of their commercial liberties, spurn the idea of governmental ownership or management of the railroads.—Joseph Nimmo, jr.

If ever American social ideas be ripe for the ownership and operation of railways by the State, then it will be time for a change of policy; at present the ideas of the Republic are not compatible with state socialism as applied to railways. If the United States will do justice between them and the people, it will do all that society expects for awhile.—*The Union Pacific Railway*, Davis, 1894.

The zone tariff systems of Hungary and Austria constitute the most important reform of modern times in the administration of the passenger traffic by railway. It was inaugurated in 1889, and its object was to encourage long-distance travel between the capital and the provinces, the theory being that the increased volume of travel would fully compensate for the lower charges to individuals. Each railway is divided into sections called zones, and all the railways of Hungary have a common center at Budapest. The zones are established to and from that center. Passenger rates are fixed, not per mile or per kilometer, but at so much per zone, the charge for every fraction of a zone being the same as for a full zone, thus bearing some analogy to the practice of grouping rates in freight traffic. As each zone constantly increases in length over that immediately preceding it, the effect of the system is evidently a constantly diminishing rate per mile or per kilometer in proportion to distance traveled.—*Railroad Regulation in Foreign Countries*, appendix to Fourth Annual Rep., I. C. C., page 334 et seq.

Regulation through State ownership has been practically unknown in the United States. It is of foreign origin and is foreign to the character of our institutions. The time may come when the people of the United States will be forced to consider the advisability of placing the railways of the country completely under the control of the General Government, as the postal service is, and as many believe the telegraph service should be. This would seem to be the surest method of securing the highest perfection and greatest efficiency of the railroad system in its entirety, and the best method of making it an harmonious whole in its operation and of bringing about that uniformity and stability of rates which is the greatest need of trade and commerce. But the dangers to be apprehended from the giving of such vast additional power to the Government will always prove a formidable barrier to the adoption of such a policy, and this committee sees no necessity for considering its advantages or disadvantages until other methods of regulation more American in spirit have at least been given a trial and have proved unsatisfactory. Nor is it deemed important to investigate in detail the experience of those European nations in which the policy of state ownership or management in one form or another has prevailed.—*The report of the Senate Select Committee on Interstate Commerce*, 1886.

The difference between American and foreign railways is very great, and the advantages are all on the side of the American railroad. The English is better than the continental railway and more progressive, and the reason seems to be in state ownership. The nearer you get to governmental pro-

prietorship in the lines the more uncomfortable and old-fogy and nonprogressive they remain.—*Chauncey M. Depew, Railway Review, 1887, page 663.*

In my judgment there is no adequate necessity for our country to try that which I think would be a dangerous experiment of the Government in assuming the enormous burden of debt which the acquisition of all the railroads would involve, and to engage in a business that requires a force of nearly 1,000,000 men. * * * The necessity should be the most extreme before such enormous power and working force should be added to that which the General Government already has. * * * As a general proposition rates are low. * * * Regulation under the law, State and national, is working out its designed result in correcting evils that had crept into railroad administration. * * * In a word, without stating further reasons, I do not believe that transportation by common carriers, or the interests of commerce, will be improved by Government ownership and operation of railroads. The railroads themselves, as artificial persons, would undoubtedly be benefited in a majority of cases by Government assumption, but I would not take the risk of it.—*Interstate Commerce Commissioner Veazey: Interview in the Washington Star, July 21, 1894.*

[Extracts from *The People and the Railways, 1883, Morgan.*]

The railroads are tyrants, they dominate this public, they purchase legislators, corrupt judiciaries, rule us with a rod of iron, is the popular cry. What is the remedy? Why, make them still stronger, make them the very Government itself. (Page 171.)

At present, utterly depraved as our railways are, and skillful as the high-priced legal talent they monopolize, they do, sometimes, pay for our baggage when they smash it, our cattle when they kill them, our freight when they destroy or mislay it, for our legs and arms and eyes when they maim us. I do not know whether all this would be done with a greater or less alacrity under a system of government-controlled railways. But I think I do know that the more paternal a government becomes, it is apt to take rather less than more care of the individual subject. (Page 173.)

The fairest plan would seem to be, if the railways were to be purchased at all, to enact that when any railroad company had paid its stockholders a certain agreed dividend for a certain number of years, then the Government should purchase its entire line and plant at a valuation of its stock based upon the payment of such dividends. If any plan were practicable, I think this plan would be. And if any plan of Government railway purchase could ever be just and honest to the involuntary venders, I think this one might be made so. (Page 174.)

[Extracts from *National Consolidation of Railways, 1893, Lewis.*]

A very large part of the social leadership of this country, instead of being a conservative force against the encroachments of the railway system, as in England, here casts its strength in favor of that system. So that consolidations of railway power which might be harmless in England, because counterbalanced by the power of the nobility, would be terribly dangerous in this country, where the force of wealthy and powerful families is directly opposite, and is cast into the scale of the railroad power. (Page 146.)

Thus, on account of radical differences both in the social organization and in the political constitution and form of government, a world-wide difference exists in the effect which the same consolidation of railway power under private ownership would exert in this country and in England. That which might be there safe would be here exceedingly dangerous, and in the end practically subversive of our republican form of government. (Page 148.)

If the National Government should buy up the roads, while nominally it would own them, in fact the ownership would be in the individuals and institutions furnishing the money to buy the bonds which the Government must issue to purchase the roads. Nor is governmental control necessarily the best method of managing the railroads. It might be the worst possible method if under the control of a corrupt and unscrupulous coterie of politicians. In such a case neither property nor business interests nor commercial or political liberty would be safe. (Page 207.)

The objection to governmental control on the ground of danger in our political affairs is not obviated by permitting this control to be left in the hands of a few private citizens. In fact, carefully analyzed, the objection will be seen to be based on the power which so vast an aggregate of wealth in one line of business, capable of being so easily controlled toward one object, inevitably creates. (Page 253.)

And in reply to the point made against Government ownership, that the railroad system would exercise too great an influence in our politics, I answer that the railroads now exercise a most dangerous and often corrupt influence in our politics, both State and national. (Page 260.)

In every State of the Union railroad influence is powerful, if not dominant, in its politics, and it is doubtful whether, if the Government should purchase the railroads their influence in politics would be any greater than it is now.

The concentration of this influence, however, in national politics, with the vast power which so great a number of officeholders would exert in a national canvass, would make this influence exceedingly dangerous. (Page 267.)

[An extract from *National Railways: An Argument for State Purchase*, by James Hole, 1893, pages 10 and 11. (English.)]

As governments improve more public work can be intrusted to them, and they in turn are improved by it. The process is gradual. Thus it happens that individuals make a highway or a bridge at their own cost, and as recompense charge a toll. In time this is found to be an uncertain, slow, and costly process, and the community makes its own roads and bridges. The post-office was started as a private enterprise, and if it had remained one it would never have reached its present magnificent development. The telegraphs have followed this example. The adaptation of it, the telephone, will do the same. Gas, water supply, tramways, are falling under municipal ownership. Electric lighting is now in the private or company enterprise stage, but the examples of Bradford and St. Pancras (about to be followed in other places) show that this, too, is likely to fall within the sphere of municipal government. And when these public improvements are taken out of private ownership, those who led the way should be justly, even liberally, compensated.

So, too, railways fall under the class of things that the state ought to own in the public interest. It is admitted that private enterprise originated and perfected them, that it found the capital and energy to spread them over the country. The fair presumption, however, is that railroads, like all other roads, should be under public authority, and this is confirmed by practical experience. In other words, that to secure the full advantages of which the railway system is capable, it should be in the ownership of the state, as the trustee of the public.

Since this report was issued there have been some slight changes in the relations of the governments to their railroads. For instance, in Switzerland the Federal Legislature has adopted a proposition for state ownership. But upon the whole, the general relations of the different governments of the world to the railroads remain as they existed at the time of said report.

Can it be said in the face of these statistics and views of various writers on this subject that this country is ready to seriously consider the question of the Government ownership of railroads? I think not. Not, in my opinion, until all the methods of regulation have been fairly tried and failed. Should the National Government enter upon an experiment so uncertain in its results and so fraught with danger to its institutions? I confess the longer the present chaos in the conduct of our railway business is permitted to exist the nearer shall we approach the question of state ownership, and no time is to be lost in inaugurating a stringent regulation of the railways by Federal and State authority to avert this crisis.

In what, then, is this regulation to consist in order to bring about order out of the present state of confusion, and to protect the people against further abuses, and to secure stability and uniformity of rates alike just and reasonable to the railways and the people?

I answer that it consists in the strengthening of the present Interstate Commerce Commission, by investing it with legislative powers to fix and maintain maximum and minimum rates in freight and passenger traffic; with general administrative powers to regulate interstate commerce in all its details, making its orders, reports, and findings conclusive and lawful until they are challenged in the courts and found to be unlawful. To show that Congress has this power, I beg to offer the following decisions and precedents of the courts:

POWER OF CONGRESS OVER INTERSTATE COMMERCE.

Congress has power "to constitute tribunals inferior to the Supreme Court." (Cons. U. S., section 8, clause 9.)

To regulate commerce with foreign nations and among the several States and with the Indian tribes. (Cons. U. S., section 8, clause 3. Article I.)

The making and fixing of rates is a legislative and not a judicial function and the decisions are uniform in declaring that statutes creating railroad commissions, and giving them the power to make and fix rates, are not unconstitutional as delegating a legislative power which belongs only to the legislature itself. (8 Am. and Eng. Ency. of Law, 911; *R. R. vs. Dey*, 4 Ry. and Corp. L. J., 465; *Granger Cases*, 94 U. S., 113-187; *State vs. R. R. Co.*, 37 N. W., 782; *State vs. R. R. Co.*, 35 N. W., 118; 36 Ib., 306; *Tilley vs. R. R. Co.*, 5 F. R., 641; *Georgia R., etc., Co. vs. Smith*, 70 Geo., 694; *N. Y. and N. E. R. R. Co. vs. Town of Bristol*, 151 U. S., 536; *Reagan vs. F. L. and T. Co.*, 154 U. S., 362, and cases quoted; *Ames vs. Un. Pac. Ry. Co.*, 64 F. R., 165.)

When the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others. (*Johnson vs. Towsley*, 13 Wall., 72.)

The legislature's determination, either directly or indirectly, of what is reasonable is conclusive, subject only to charter rights and to the fact that the rates established will give some compensation to the carrier. (*Attorney-General vs. Old C. R. Co.*, 22 L. A. R., 112; *C. and N. W. R. Co. vs. Dey*, 35 F. R., 866.)

The power to regulate is to prescribe the rule by which the commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. If, as has already been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States. (*Gibbons vs. Ogden*, 9 Wh., 1, 197.)

It is obvious that the Government, in regulating commerce with foreign nations and among the States, may use means that may also be employed by a State in the exercise of its acknowledged powers—that, for example, of regulating commerce within a State. (*Gibbons vs. Ogden*, 9 Wh., 204.)

The power to regulate commerce * * * amounts to nothing more than a power to limit and restrain it at pleasure. (*Gibbons vs. Ogden*, 9 Wh., 227.)

It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which induced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief and should comprehend all foreign commerce and all commerce arising among the States. (*Brown vs. Maryland*, 12 Wh., 446.)

The power to regulate commerce includes that of punishing all offenses against commerce. (*U. S. vs. Coombs*, 12 Pet., 72.)

The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality amongst the several States as to commercial rights, and to prevent unjust and invidious distinctions which local jealousies or local and partial interests might be disposed to introduce and maintain. (*Veazie vs. Moor*, 14 How., 574.)

Commerce is a term of the largest import. * * * The power to regulate it embraces all the instruments by which such commerce may be conducted. (*Welton vs. Missouri*, 91 U. S., 280.)

The power conferred upon Congress to regulate commerce with foreign nations and among the several States is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the new developments of time and of circumstances. It was intended for the government of the business to which it relates at all times and under all circumstances; and it is not only the right but the duty of Congress to take care that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation. (*Pa. Tel. Co. vs. W. U. Tel. Co.*, 93 U. S., 9.)

The power to regulate that commerce * * * vested in Congress is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted. * * * The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. (*Gloucester Ferry Co. vs. Penn.*, 114 U. S., 203.)

When a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. (*The Daniel Ball*, 10 Wall., 565.)

But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. (*Coe vs. Errol*, 116 U. S., 517.)

This species of legislation is one which must be, if established at all, of a general and national character. (*Wabash Rwy. Co. vs. Ill.*, 118 U. S., 577.)

For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. (*County of Mobile vs. Kimball*, 102 U. S., 691.)

The power to regulate commerce embraces a vast field, containing not only many but exceedingly various subjects quite unlike in their nature. (*Cooley vs. Board of Wardens*, 12 How., 299.)

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. (*Brown vs. Houston*, 114 U. S., 622.)

The uses of railroad corporations are public, and therefore they are subject to legislative control in all respects necessary to protect the public against danger, injustice, and oppression. (*N. Y. and N. E. R. Co. vs. Bristol*, 151 U. S., 556.)

Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several States is to be governed, and may, in its discretion, employ any appropriate means, not forbidden by the Constitution, to carry into effect, and accomplish the objects of, a power given to it by the Constitution. (*I. C. C. vs. Brimson*, 154 U. S., 447.)

The making and fixing of rates by either a legislature directly or by a commission do not work a deprivation of property without due process of law. (*Munn vs. Ill.*, 94 U. S., 113; *Davidson vs. New Orleans*, 93 U. S., 97; *Stone vs. F. L. and T. Co.*, 116 U. S., 307; *Dow vs. Beidelman*, 125 U. S., 680; *Minneapolis and St. L. R. Co. vs. Beckwith*, 192 U. S., 26, and cases cited; *Budd vs. New York*, 143 U. S., 517; *N. Y. and N. E. R. Co. vs. Town of Bristol*, 151 U. S., 556; *Reagan vs. F. L. and T. Co.*, 154 U. S., 362.)

The State does not lose the right to fix the price because an individual voluntarily undertakes to do the (public) work. (*Budd vs. N. Y.*, 143 U. S., 517.)

The Nebraska statute fixing maximum rates is not obnoxious to the fourteenth amendment. (*Ames vs. Un. Pac. Ry. Co.*, 64 F. R., 165.)

The compelling of railway companies to comply with the order of railroad commissioners regulating rates is due process of law. (8 Am. and Eng. Ency. of Law, 911; *Chicago, etc., R. Co. vs. Becker*, 32 F. R., 849; *L. and N. R. Co. vs. R. R. Com.*, 16 Am. and Eng. R. Cas., 1; *Oregon R. Com. vs. Oregon R. and N. Co.*, 35 Am. and Eng. R. Cas., 542; *State vs. C. M. and St. P. R. Co.*, 37 N. W., 782; *Stone vs. Natchez*, 62 Miss., 646; *Stone vs. Trust Co.*, 116 U. S., 307; *State vs. Fremont, etc., R. Co.*, 32 Am. and Eng. R. Cas., 426; *People vs. N. Y., L. E. and W. R. Co.*, 104 N. Y., 58; *State vs. R. R. Co.*, 37 Conn., 153.)

The principal objects of the interstate-commerce act were to secure just and reasonable charges for transportation. * * * (*I. C. C. vs. B. & O. R. R. Co.*, 145 U. S., 263.)

It is difficult to perceive how the power to fix and regulate the charges for such transportation can be considered in any other light than that of a power to regulate commerce. (*Ill. C. R. Co. vs. Stone*, 20 F. R., 468.)

It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish and to descend to the most minute directions if it shall be deemed advisable. (*Cooley, Const. Lim.*, 732, quoted with approval by Mr. Justice Field in the case of *Gloucester Ferry Co. vs. Com. of Pa.*, 114 U. S., 196.)

That this power to regulate by fixing charges for interstate transportation is vested solely in Congress by Article I, section 8, paragraph 3, of the Constitution of the United States is, in my opinion, equally well settled by numerous decisions of the Supreme Court of the United States. (*Mobile & O. R. Co. vs. Sessions*, 28 F. R., 592.)

Several of the State statutes, under State constitutions containing nearly identical provisions on the subject as the Federal Constitution, allowing State railroad commissions to make and fix railway rates for such States, which said rates were to be operative until set aside by the courts, have been upheld as valid and constitutional by the United States Supreme Court. (See *P. & A. R. Co. vs. State*, 3 L. R. A., 661, with extensive notes.)

This Federal commission has assigned to it the duties, and performs for the United States in respect to that interstate commerce, committed by the Constitution to the exclusive care and jurisdiction of Congress, the same functions which State commissioners exercise in respect to local or purely internal commerce, over which the States appointing them have exclusive control. Their validity in their respective spheres of operation stands upon the same footing. The validity of State commissioners, invested with powers as ample and large as those conferred upon the Federal commission, have not been successfully questioned when limited to that local or internal commerce over which the States have exclusive jurisdiction; and no valid reason is seen for doubting or questioning the authority of Congress, under its sovereign and exclusive power to regulate commerce among the several States, to create like commissions for the purpose of supervising, investigating, and reporting upon matters or complaints connected with or growing out of interstate commerce. What one sovereign may do in respect to mat-

ters within its exclusive control the other may certainly do in respect to matters over which it has exclusive authority. (Ky. and Ind. Bridge Co. vs. L. and N. R. Co., 21 C. Rep., 330.)

The power granted to Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit only of one uniform system or plan of regulation throughout the country. * * * In the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation and not to a multitude of systems. (Robbins vs. Shelby Co., etc., 120 U. S., 439; Stoutenburgh vs. Henrick, 129 U. S., 141.)

Congress may, under certain conditions, reduce the rates of fare on the Union Pacific Railroad, if unreasonable, and fix and establish the same by law. (12 Stat. L., 497, sec. 18. This statute is discussed by Mr. Justice Brewer in Ames vs. Un. Pac. Ry. Co., 64 F. R., 165, and held not to conclude the State of Nebraska from fixing rates until Congress takes action.)

This act (of Colorado) was intended to apply to intrastate traffic the same wholesome rules and regulations which Congress two years thereafter applied to commerce between the States. (Un. Pac. Ry. Co. vs. Goodridge, 149 U. S., 680.)

The Interstate Commerce Commission is an administrative board, and the courts are only to be resorted to when the commission prefers to enforce the provisions of the statute by a direct proceeding in the court or when the orders of the commission have been disregarded. (I. C. C. vs. C., N. O. and T. P. Ry. Co., 162 U. S., 184.)

The entire commerce of the United States, foreign and interstate, is subject to the provisions of the act of Congress to regulate commerce. (Tex. and Pac. Ry. Co. vs. I. C. C., 162 U. S., 197.)

Upon the power of legislatures to fix tolls, rates, or prices, see note to case of Winchester and L. Turnpike R. Co. vs. Croxton, 33 L. R. A. 177.

A statute imposing a penalty for charging more than just and reasonable compensation for the services of a carrier, without fixing any standard to determine what is just and reasonable, thus leaving the criminality of the carrier's act to depend on the jury's view of the reasonableness of a rate charged, is in violation of the constitutional provision against taking property without due process of law. (L. and N. E. Co. vs. Kentucky, 33 L. R. A., 209.)

Penalties can not be thus inflicted at the discretion of a jury. * * * The legislature can not delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a "fair and just return" on its investments, it must, in order to maintain the validity of the law, define with reasonable certainty what would constitute such "fair and just return." (L. and N. R. Co. vs. R. R. Com., 19 F. R., 679.)

The Supreme Court of the United States, in Railroad Commission Cases, 116 U. S., 336, refers to the last-named case and substantially approves it.

Although a statute has been held to be unconstitutional which left it to the jury to determine whether or not a charge was excessive and unreasonable, in order to ascertain whether a penalty is recoverable, yet, where the action is merely for recovery of the illegal excess over reasonable rates, this is a question which is a proper one for a jury. (8 Am. and Eng. Ency. of Law, 935.)

The Iowa railroad commission act was attacked for uncertainty on the ground that it did not prescribe what should constitute a reasonable rate; but as the statute declared that the rate fixed by the commission should be prima facie evidence that it was reasonable, although the accused could show in defense that it was not reasonable, the supreme court of the State held that the statute was sufficiently definite, since the rate was fixed, although it was subject to attack in the courts. To the claim that the commissioner's rate would not secure the accused from conviction if it was excessive the court declared that the State was precluded from denying that the commissioner's rate was a reasonable one. (Bur. C. R. and N. R. Co. vs. Dey, 12 L. R. A. 426.)

The same decision in substance was made on this question by Judge Brewer, then of the United States circuit court, in the case of C. and N. W. R. Co. vs. Dey, 35 Fed. Rep., 866.

The Illinois act providing that a charge by a railroad company of more than reasonable rates shall constitute extortion is held to be sufficiently definite when construed with another section which provides that the railroad commission shall make a schedule of reasonable maximum rates. (C., B. and Q. R. Co. vs. People, 77 Ill., 443.)

And the validity of this provision of the Illinois statute has been further established by the Illinois supreme court. (See C., B. and Q. R. Co. vs. Jones, 149 Ill., 361, 24 L. R. A., 141; Stone vs. F., L. and T. Co., 116 U. S., 307, deciding the same way the Mississippi statute.)

The Georgia statute is not violated unless the rates charged exceed those fixed by the commission. (Sorrell vs. Cent. R. R., 75 Ga., 509.)

But in order to constitute a crime the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an

act can not depend upon whether a jury may think it reasonable or unreasonable. (Tozer vs. U. S., 52 F. R., 917.)

An inquiry whether rates of carriers are reasonable or not is a judicial act; but to prescribe rates for the future is a legislative act. That Congress has transferred to any administrative body the power to prescribe a tariff of rates for carriage by a common carrier is not to be presumed or implied from any doubtful and uncertain language. (I. C. C. vs. C., N. O. and T. P. R. Co., 167 U. S., 479.)

In the case of *Munn vs. Illinois*, Ninety-fourth United States supra, the Supreme Court of the United States, after a thorough review of the American and English authorities, has laid down the following fundamental principles governing public carriers and other quasi public institutions:

1. Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his own property.

2. It has, in the exercise of these powers, been customary in England from time immemorial, and in this country from the first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, auctioneers, innkeepers, and many other matters of like quality, and in so doing to fix a maximum charge to be made for services rendered, accommodations furnished, and articles sold.

3. The fourteenth amendment to the United States Constitution does not in any wise amend the law in this particular.

4. When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public.

5. The limitation by legislative enactment of the rate of charges for services rendered in an employment of a public nature, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one.

Thus the highest court has permanently established the broad principle that the public have the right to regulate charges in all enterprises effected with a public use. To this doctrine all the courts have steadfastly adhered. In this leading case it was also held that the courts had no right to interfere with the rates fixed by the lawmaking power. This doctrine, however, has been since somewhat qualified in the case of *Reagan vs. Trust Company* (154 U. S., 412) and other cases there cited, where it is held that when rates are confiscatory the courts may so declare and relegate the matter back to the lawmaking power for new rates, by which a reasonable profit is left to the carrier. But the principle that the legislative power, either directly, or indirectly through a commission, can fix rates of freight and passenger traffic within this constitutional limitation has been uniformly upheld in all the decisions of the United States Supreme Court upon this subject. In a recent case, that of *Livingston vs. Sanford* (164 U. S., 578), the court uses the following language:

We could not say that the act was unconstitutional because the company (as is alleged and admitted) could not earn more than 4 per cent on its capital stock.

It can not be said that a corporation is entitled as of right and without reference to the interest of the public to realize any given per cent on capital stock.

When the question arises whether the legislature has exceeded its constitutional power in prescribing the rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored.

The court further says:

The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. * * * If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public.

In the case of *Chicago vs. Wellman* (143 U.S., 339), where the act of the Wisconsin legislature fixing railroad fares at 2 cents per mile was challenged, the courts say:

Before the court would declare such an act unconstitutional because the rates prevented stockholders receiving any dividend or bondholders any interest, the court must be fully advised as to what was done with the earnings; otherwise by exorbitant or unreasonable salaries or in some other improper way the company might tax the public with unreasonable charges. Unless such things are negatived by proof of reasonable salaries and expenses, or if the record is silent, the legislative rate will be sustained.

This principle was reaffirmed in *Regan vs. Trust Company* (U.S., supra). In *Dowe vs. Beidelman* (125 U.S., 680) it was held that rates which would pay only $1\frac{1}{2}$ per cent on the original cost of the road were not illegal when the road is held by a reorganized company or its trustees after foreclosure. Even in charter exemptions it has been held that provisions in a railroad charter permitting the company from time to time to fix rates, etc., does not constitute a contract restricting the legislature from the power of fixing or reducing charges. (*Stone vs. Farmers' Company*, 116 U.S., 307; *Stone vs. Illinois*, id., 349; 134 U.S., 418; 108 U.S., 526; 94 U.S., 164; 132 U.S., 75.)

In short, the United States Supreme Court has declared that the railroads are chartered and built for the public benefit, and that the pecuniary profit of the owners is purely incidental.

It is a common mistake which some people still make, to look upon railways solely as the private property of the owners. These people forget that the railways are connected with the public interest, that they are quasi public corporations, and that their freight and passenger charges partake of the nature of public taxation, which is always subject to legislative control; that the interest of the public is paramount, and that the maxim "*Suprema lex salus populi*" is the true foundation upon which they exist.

It follows therefore that Congress has not only authority to delegate its power of fixing rates to a commission, but that it can invest this commission with power to examine and look into the character of the expenditures and management of the railways, and limit them to a reasonable net profit on the real value of their properties, without taking into account watered stock and bonds, exorbitant salaries, illegal disbursements or lobbying, and paying election and newspaper expenses, as well as all other extravagant expenditures. If we estimate the actual value of all railroad properties in this country in round figures at, say, \$5,000,000,000, and their gross annual earnings in round figures at \$1,000,000,000, we have a gross income of 20 per cent on said actual value, a higher gross profit than any legitimate business yields in this country.

Most of these earnings are expended for operating expenses, amounting, in round numbers, to \$700,000,000. It would not only be to the interest of the public but that of the investor in railroad properties to have this item of expenditure brought under a system of thoroughgoing public accounting, when it would be found that much of this enormous expenditure was unwarranted and extravagant.

It must be remembered that this is a larger sum by \$200,000,000 than that which is expended annually for the maintenance of the National Government, and includes salaries to officials in many instances which are double those paid by a single State to its governor and all of its other executive officers, and sometimes ten times what such State pays its chief executive. It also includes

other large amounts for illegal expenditures, such as lobbying, running newspapers, and election expenses.

It is the right of the people to be informed of the character and amount of these expenditures for operating the railways and to have those which are illegal discarded, in the estimate of fixing rates on freight and passengers. This power of Congress to regulate commerce extends also to the matter of classification of freights. Under the present practice of diversified classification by the railways in different sections of the country, much serious dissatisfaction is occasioned among shippers. Charges of unjust discriminations between rival communities or kindred articles are of frequent occurrence, without adequate means of prevention or regulation on the part of the Interstate Commerce Commission. It should be the object of the law to secure to the public impartial treatment on behalf of the railways in this respect.

In fact it is impossible to intelligently fix rates until some system of uniform classification has been established. It is admitted on the part of the railways that without legislative initiative the railways can never be induced to agree upon the work of classification, which they confess is highly desirable.

The interchange of traffic between connecting lines and the continuous carriage of freights from the place of shipment to the place of destination is another matter to which the effort of a commission can be directed, backed with ample power to enforce it.

Suitable fines and penalties to enforce all the orders and regulations of the commission is another implied power under the authority above quoted which should be clearly provided by Congress to reach all cases of infractions, either when permitted by the officers and agents of the railway companies or by the corporations themselves.

The power of the commission so delegated to it that its orders and regulations shall become effective without the aid of the courts, and until set aside by them for unconstitutionality, is clear and constitutes more than any other feature the efficiency of administrative regulation. In fact, the power of Congress is most ample to delegate full and complete authority to the Interstate Commerce Commission as a legislative and an administrative body to regulate interstate commerce in all its details, so as to make it at once satisfactory both to the carriers and the shippers upon the present basis of private ownership, and to make railway transportation far more efficient than it possibly could be made under the present cut-throat system or under State ownership.

Such interstate regulation, together with intelligent cooperative State regulation, is, in my opinion, the best system that could at this time, at least, be devised, and one which is entirely practicable.

Up to the time that the United States Supreme Court decided affirmatively that the Interstate Commerce Commission had no implied power to fix rates (May 24, 1897) under the act of February 4, 1887, it was generally believed that the latter embraced this power, and for ten years both the commission and the railways had pretty well accepted this doctrine, until finally the commission's power in this respect was directly challenged by the large traffic associations. These cases are known as the Freight Bureau Cases (167 U. S.). The commission in these cases found that the rates of the various railways who were defendants were unreasonable and in violation of the provisions of said interstate-commerce act, and ordered said defendants to desist from further charging such rates. The railroad companies having failed to

comply with said order, the commission, under section 16 of said act, instituted suit in the circuit court of the United States for the southern district of Ohio to compel obedience thereto.

The said circuit court dismissed the bill, from which decree an appeal was taken to the court of appeals, and that court submitted the issue to the United States Supreme Court whether the commission had power to fix rates.

On the 24th day of May, 1897, the Supreme Court of the United States delivered its opinion, deciding that the Interstate Commerce Commission had no such power under said act.

The court among other things says:

Before the passage of the act it was generally believed that there were great abuses in railroad management and railroad transportation, and the grave question which Congress had to consider was how those abuses should be corrected and what control should be taken of the business of such corporations.

The present inquiry is limited to the question as to what it determined should be done with reference to the matter of rates. There were three obvious and dissimilar courses open for consideration. Congress might itself prescribe the rates, or it might commit to some subordinate tribunal this duty; or it might leave with the companies the right to fix rates, subject to regulations and restrictions, as well as to that rule which is as old as the existence of common carriers, to wit, that rates must be reasonable. There is nothing in the act fixing rates.

The court, then, after going over the act, further says:

The question debated is whether it (Congress) vested in the commission the power and the duty to fix rates, etc. The grant of such power is never to be implied. The power itself is so vast and comprehensive, so largely affecting the rights of carriers and shippers, as well as indirectly all commercial transactions, the language by which the power is given had been so often used, and was so familiar to the legislative mind and capable of such definite and exact statement, that no just rule of construction would tolerate of such grant by mere implication. Administrative control over railroads through boards or commissions was no new thing. It had been resorted to in England and in many of the States of this Union, etc.

Then, after quoting many of the legislative acts of different States authorizing commissions to fix rates, the court concludes:

Our conclusion, then, is that Congress has not conferred upon the commission the legislative power of prescribing rates, either maximum or minimum or absolute. As it did not give the express power to the commission, it did not intend to secure the same result indirectly by empowering that tribunal to determine what in reference to the past was reasonable and just, whether as maximum, minimum, or absolute, and then enable it to obtain from the courts a peremptory order that in the future the railroad company should follow the rates thus determined to have been in the past reasonable and just.

Mr. Justice Harlan dissented. (*Interstate Commerce Commission vs. Cincinnati, New Orleans and Texas Pacific Railway Company*, 167 United States, 479.)

Thus it will be observed that the Interstate Commerce Commission has neither express nor implied power under said act to fix rates, and that the railways alone have this power; and that the only way in which such rates can be questioned is by direct suit at common law in a court of competent jurisdiction upon complaint of a shipper that rates are unreasonable and unjust. Of course, such a proceeding leaves the shipper practically without a remedy, as the great majority of shippers are financially and otherwise not able to cope with the railway companies upon such a question in the courts. So that this decision is not only far-reaching in its consequences, but virtually emasculates the said act and leaves nothing of it of any force, except section 5, prohibiting pooling. With this out of the way, the status of the railways would be exactly where it was when the interstate-commerce act was passed ten years ago, with the additional power of pooling conceded to the railroads.

It is therefore the plain duty of Congress—

1. To empower the commission to fix and maintain maximum and minimum rates upon complaint made or upon its own motion and after a full and fair investigation of the facts.

2. To so amend the law as to provide for the interchange of traffic between connecting lines and to enforce the continuous carriage of freight from the place of shipment to the place of destination.

3. To empower the commission to prescribe uniform classification of freight,

4. To empower the commission to prescribe and enforce an efficient system of accounting, so as to ascertain reliable data of the value of the railroads and their annual income and expenditures, etc.

5. To so amend the law as to make the orders, proceedings, and regulations of the commission effective by denouncing adequate fines and penalties for the violation of such orders, proceedings, and regulations, and by placing the onus probandi that rates are unreasonable and the orders of the commission erroneous upon the railway companies.

In addition to all this, it will be necessary to amend section 4 of the act concerning the long and short haul so as to meet the effect of the recent decision of the United States Supreme Court in the case of *Interstate Commerce Commission vs. Alabama Midland Railway Company et al.*, decided November 9, 1897, in which the court holds that competition in interstate freight rates may be taken into account as one of the dissimilar conditions and circumstances by which a carrier may ignore this section of the law without first applying to the Interstate Commission for authority to do so. This section should not be suspended for any cause except when the carrier is directly authorized to do so by the Interstate Commerce Commission, as without its active effect intermediate points are absolutely at the mercy of the carriers and the grossest inequalities must follow and the most injurious discriminations result.

The above amendments to the original act, together with a few minor amendments, will make the act what it was intended to be—a protection of the people against the greed of railway corporations, as well as other corporations who grow and thrive into trusts upon the illegitimate favors of freight discriminations and rebates.

The power of the commission to fix minimum as well as maximum rates would protect the railways against unjust and unreasonable competition and rate cutting, and would at once remove all just contention on their part for railroad pooling. It would effectually remove every reasonable ground for legalized pooling, but would have none of the objectionable consequences which pooling would entail upon the shippers and producers, and would go far toward maintaining uniformity and stability of rates, while the power of the commission to fix reasonable maximum rates would inure to the benefit of the shipper and producer, would secure cheaper transportation rates generally to the people, and would still leave a legitimate profit to legitimate railroad investment. Such a power vested in a commission would soon be recognized by the railway companies, and in a short time there would be a voluntary scaling of rates to a reasonable basis on the part of the railways without special interposition by the commission. Once let the railroads know that their rates must

not be extortionate and they would soon adjust them upon a fair principle. With lower rates of freight, the business of the railways would increase correspondingly as the shipper and producer prospered. Under the commission's power to fix rates and the power it already possesses to prevent discriminations and abuses, together with the other amendments suggested, clique enterprises and trusts alone would be restricted, if not destroyed, and impartial treatment to all shippers and producers would secure equality of opportunity to all.

The compulsion of an interchange of traffic between connecting lines and a continuous carriage of freights from the point of shipment to the point of destination is of the utmost importance and should rest primarily in the hands of the commission.

The law as it now stands is inadequate, and railway companies who are hostile to each other can not be forced to carry the freights of connecting lines, although their roads may furnish the shortest and best route for through carriage. In England, upon application of a connecting line, or any person interested in through traffic, the commission can force such interchange of freight in the interest of the public by fixing and apportioning the proper rates to which connecting lines are entitled, and of course proper safeguards are provided in the interest of the connecting lines.

A similar provision in the interstate-commerce law is all that is required.

When it is considered that the transportation of freight involves the handling and carrying of a great variety of commodities of different weight, bulk, size, condition, risk, value, and character, it can be easily understood that a classification of this freight matter is of prime necessity in order to fix freight rates, and that classification of freight is in fact the foundation of fixing reasonable and just rates. Unless there can be a thorough classification of the various commodities of the entire commerce of the country no reliable basis for fixed freight charges can be made, and although some of the great trunk lines have done much to approximate such classification, there can never be uniformity in this direction until the Government takes the initiative and compels the different railways to conform to a general classification, as under the present system of private classification local and individual interests stand in the way of uniformity.

On the other hand, all interests, both of the railways and of commerce, concede the desirability of a single uniform freight classification, and all that is needed is to give the commission the power to inaugurate it, and little, if any, opposition on the part of the railway is probable.

A uniform system of accounts by the railways under close supervision and control of the commission is also of first importance. The expenditures made by the railways should be open to full and thorough inspection by the commission, so that it may be determined whether they are warranted or not in passing upon the question of reasonable rates. Frequent reports of the earnings of railways and operating expenses under specific supervision of the commission are necessary to the protection of the public and the stockholders alike, and must constitute one of the principal features of public regulation.

That the orders and rules of the Interstate Commerce Commission should be self-enforcing, without the additional machinery of the courts, in order to become efficient and bring about the public regulation so much desired, must be self-evident and can not be

questioned on constitutional grounds at this time. The Supreme Court of the United States having uniformly held that Congress has the exclusive power to regulate interstate commerce in all of its details and to delegate this power to a commission, and that when a business or property is connected with a public use such property or business becomes subject to legislative control; that due process of the law of the land in the matter of public control is one which, following the forms of law as appropriate to the case, is just to the parties to be affected and does not necessarily include a trial or a judgment of a court; that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others, there can be little room or doubt that when the commission has fairly passed upon the facts, after due and full notice to the parties at interest in a question affecting the regulation of interstate commerce, such finding is conclusive, unless it is confiscatory in its nature, and that such finding can be enforced by proper fines and penalties enacted by Congress and to apply in the event of disobedience on the part of the railway to such findings.

Local tax assessors and boards of equalization in most if not all the States of the Union now pass upon the question of valuation of the properties of the railways, and in some instances without the right of appeal. Upon what legal ground can it be said that a national railroad commission shall not have the right, under the Constitution of the United States and the interstate-commerce law, to say what rates shall be charged by the railways, what classification of freights they must adopt, what connecting lines they must use in the carriage of interstate commerce, what proportion of the freight and revenues they are entitled to, and how they must keep their accounts, etc.? None; unless such action on the part of the commission is arbitrary, unjust, unfair, and deprives the railway of all profit and forces it to carry freight for nothing.

In that event the railways could at once resort to the courts and relieve themselves of illegal oppression and protect themselves against irreparable injury by injunction against the orders of the commission. But why should the lawmaking power forever be placing the people in the attitude of supplicants and forcing its commission to resort to the courts as a common litigant in order to enforce its rules, orders, and proceedings legally and constitutionally made and declared in the first instance? It is time that the railway companies are taught the lesson that they must obey the orders of the commission, under adequate fine and penalties fixed by Congress for their infraction, like they are required to respond to the assessment of a local tax assessor or any equalization board under a State law, and that if such order is unconstitutional, the onus probandi is upon the railways and not the commission.

This is the theory upon which the railroad-commission law of Texas has been constructed, and although its constitutionality has been combated in the courts it has not been declared unconstitutional and is to-day the most efficient law of its kind in all the States of the Union. Let the commission be required to give the railways a full and fair opportunity to be heard and make a thorough investigation into the facts of matters upon which it is to decide in questions affecting interstate commerce. Let it fix a reasonable time before its orders or rules shall be effective. Let

the railways have the right in the meantime to enjoin the order of the commission, but let the order be conclusive when the time has expired unless the same is set aside by the commission upon new application on the part of the railways; and lastly, let there be an adequate penalty under the law to enforce the action of the commission.

As the law now stands, the commission must bring suit in one of the circuit courts of the United States to enforce its order, and is forced to try the matter there *de novo*, not upon the record and proceedings had before such commission, but upon new and such additional testimony as the railway may choose to offer, which has the effect of making a new case and a different question from those passed upon by the commission, and usually results in defeating the order of the commission. For instance, if the commission should find that rates are unreasonable and then resort to the court and attempt, on the face of the proof before it, to show such rates to be unreasonable, the railway could by additional proof show that the rates were not unreasonable. But amend the law so that when the commission has investigated a rate and found it to be unreasonable and has fixed a rate for the future, then, without further action on the part of the court, the railway shall, under penalty of the law, observe the rate so fixed at a certain time stipulated in the order of the commission, unless the company resorts to the court and enjoins such order on the ground that it is confiscatory or erroneous.

In that event the railway company would be apt to make its full defense before the commission in the first instance rather than expose itself to the penalty and the burden of a suit in court against the commission. The railway companies would respond promptly to the summons of the commission and submit to its process and investigation with greater alacrity. The investigations before the commission would be attended by the parties at interest, with their full defense and their testimony, and they would exhaust their efforts to convince the commission that their rates were reasonable. The commission, on the other hand, assuming that its orders were self-enforcing unless set aside by the courts for grave error, would exercise its great power with caution and fairness, and the courts would not be prone to enjoin the order of the commission except upon plain error or abuse of power; all of which would soon tend to make the orders of the commission what they should be—the official acts of a legislative and administrative board, which could only be set aside upon the showing that they were clearly wrong, by those whom they were intended to affect, and which would enforce themselves by proper penalties affixed by Congress for their infraction.

These are, briefly stated, the principle reforms which I would advocate in our transportation system and which are contained in my bill (H. R. 4060) introduced by me at the present session.

Of course this bill contains other amendments of minor importance—for instance, such as will include express companies, sleeping cars, and all other improved cars used by private companies. The bill also guards against any discrimination in favor of foreign transportation companies, and subjects all traffic coming from a foreign country to the provisions of the interstate-commerce act as soon as it reaches this country, so that freight coming from a foreign country can not be carried on so-called import rates, but must be carried for the same rates as domestic freight under similar conditions and circumstances confining

these to domestic territory. Under the law as it stands now importers frequently secure better rates than domestic shippers, and goods are carried frequently cheaper from points abroad to points in the United States than between points wholly in this country, thus discriminating in favor of foreign enterprise at the expense of domestic enterprise.

Clauses as to the publication of advances and reductions in freight rates are so amended as to require publication for sixty days instead of ten and three days, as under the present law, except when otherwise ordered by the commission. The present limit is too short and does not afford the commission sufficient time to scrutinize rates and has a decided tendency to make rates both arbitrary and unstable.

The names of the several carriers who are parties to joint tariffs shall be specified, and evidence of concurrence by each of the parties thereto shall be shown or attached to the copy of such joint tariffs, etc. And the commission shall not only prescribe the form of schedules and joint tariff sheets, but enforce obedience on the part of the carriers thereto, such copies of schedules and tariffs to be filed with the commission and preserved as public records and to be used as *prima facie* evidence in investigations before the commission and in all judicial proceedings. So all copies of contracts, agreements, or arrangements between common carriers shall be so filed and used as evidence; also all statistics, tables, and figures contained in annual reports of carriers to the commission.

The penalties denounced against the officers and agents of carriers shall include the corporations themselves, as the present law applies its penalties only to such officers and agents and makes it difficult in most instances to discover the guilty official, the corporation persisting in the meantime in its infractions of the law. By making the carrier corporation amenable to a pecuniary fine a stricter observance of the law will be secured. A similar provision in the Texas statutes has but recently secured voluntary pleas of guilty of infractions of that statute by a corporation amounting to \$25,000 for unlawful freight discriminations.

In cases where the commission has found that a common carrier has injured a private party by reason of discriminations and abuses, and such finding provides for the payment of money by such common carriers by way of reparation to any injured person or party and payment is refused, such person or party may bring a suit in any State court of competent jurisdiction where such person or party resides or such carrier may have an office and operate its line, and the conduct and proceedings in such suit, including appeal, shall be determined by the laws of the State applicable to other civil suits for damages or extortion, but such suit may also be brought at the option of the plaintiff in the United States court.

Provision is also made for special agents of the commission, not exceeding ten in number, to prosecute any inquiry of the commission necessary to the performance of its duties in any part of the United States—into any question of fact pertaining to the business of the commission.

I am not unmindful of the fact that on the one hand this bill will be attacked by many of the railway companies as inquisitorial and destructive of property rights, and that on the other hand socialists will condemn it as a mere palliative, which will fail to bring about the desired reform. But I shall content myself in adopting a course which lies in the middle of these two extremes,

as frequently the truth and true reform are to be found midway between two conflicting theories.

The theory of abandoning all governmental regulation of transportation and leaving it to self-regulation is utterly indefensible and must result, as already stated, in the control of the Government by the transportation companies and their natural allies, the trusts and syndicates; while the change from private to national ownership of the railways not only involves a radical change of our industrial conditions, but a like change of our present civil government. Once assume the right of control by national ownership of the means of transportation, and establish the relation of the Federal Government toward a private enterprise of such magnitude to be based upon a theory of collectivism, and not only do we expose every other private enterprise to like governmental absorption, acknowledging the principle of the socialist that all means of production and distribution should be owned and operated by the nation for the common weal, but we admit an innovation upon our entire theory of economics, which now rests upon the competitive principle—an innovation which will not only change this to the theory of collectivism, but actually change completely our theory of government.

If, as is contended by some modern political economists, governments should own and operate in the interest of the public all enterprises which are monopolistic in their tendency and which exclude private competition or unduly restrict it, could we halt at Government ownership of railroads? Would this not require us—to be consistent—to include the mines, factories, and in fact all large industrial and commercial enterprises which have a tendency to crush out private activity? Would such a course in its logical scope not force us squarely upon the socialistic idea to destroy not only all competition, but all private capital, and convert the same into collectivism and state capitalism, to be owned and operated by the nation for all the people alike?

Of course, nationalism, as interpreted in the light of socialism, contemplates not only a revolution in the present industrial structure, but alike a revolution in our republican institutions. State lines would be wiped out, and with them the principle of representative government and the functions of the principle of the present three coordinate branches in our State and Federal governments, upon which the political life of the nation depends; in fact, the abolition of constitutional government and a substitution thereof of social democracy, with the power of the people to rule themselves directly by means of the initiative, the referendum, and the imperative mandate, as in the days of ancient Greece and Rome and again in more modern France. The principle of a government based upon a written constitution and constitutional checks as the supreme law, which can only be changed according to the mode pointed out in said constitution, a principle at which the world has so long stood in marvel and which we were taught by our fathers to recognize as the essence of our national strength, is to be thrown to the winds and recourse is again to be had to the theories of the Greek solons, the Roman Cæsars, and the French philosophers.

Let us not underestimate the growth and strength of this ancient doctrine in modern habiliments. It is here on American soil, and is fast taking root among many classes of our people and in all sections of our country. The tendency of wealth is to concentrate in the hands of the few. The trend of the times is to—

ward industrial combination, and the cry that the rich are growing richer and the poor are growing poorer is not the idle shout of the demagogue. It is not an accident. It is the real skeleton in our national closet. It is a product of the nineteenth century and the natural outgrowth of an age of invention and machinery and reckless class legislation.

It is, in short, the spirit of socialism against private capitalism, it is the eternal and irrepressible struggle between collectivism and individualism, which is as old as the hills and which has been going on since the dawn of civilization, and which will continue until the human race has run its course. These two great elementary forces will continue to antagonize each other, like the forces of nature in centrifugal and centripetal motion, and when the pendulum of one threatens to swing too far in one direction, it is wisely checked by the other. In the meantime, as civilization advances, the struggle becomes sharper and greater foresight is required to keep the great clockwork of nature's economy in running order, and to prevent the mechanism of political economy from slipping a cog in its wheels and running down and moving the hands of time a century or two back on history's dial.

What wonder that history once more repeats itself, and the theory of Plato, of Lycurgus, of Rousseau, Robespierre, Danton, and Marat is eagerly embraced as a new political evangelism by those who dream of a perfect equality and the divine right to live in comfort and happiness under a paternalistic form of government? But the answer that paternalism is impracticable can not assuage the storm that is brewing, and while we are profiting from the lesson of the French Revolution, let us not forget the fearful cost in blood and treasure of that revolution and that the wild dreams of the French philosophers led a king and a queen to the guillotine; that the fierce mobs of the Jacobins and Sans Culottes vied in making war upon all those who belonged to the better class of French citizenship, trampled private rights under foot, dispersed legislatures, preached the doctrine of nihilism, and spread red anarchy over fair France until the great Corsican, with a mailed hand, throttled the specter and lifted himself upon the throne.

Now, the lesson to be learned from history is that true and lasting reform in government is not by revolution, but by evolution, and that the task of the statesman and patriot lies in the path of evolution. But while this is so, he must not ignore the conditions which surround him. He must meet the spirit of paternalism with tangible schemes of reform, or else paternalism must continue to grow in strength and influence and finally sweep the country, or conditions growing out of capitalistic greed, worse than paternalism, must assert themselves and menace republican institutions.

While revolutionary socialism is to be absolutely condemned, it by no means follows that the extension of the nation's activity in certain directions should be decried. But before the nation extends its activity beyond the postal service—which might include the postal telegraph—and certain other entirely public functions let such socialistic reforms as are desirable begin in municipal government. Let local self-government, which is the basis and strength of our national fabric, take the initiative and make the experiment; let socialism first vindicate itself in the municipal ownership of street railways, light and water plants, etc., before

we begin at the top and plunge the nation into the vortex of general socialism.

In other words, let us not invite revolutionary socialism, or we may provoke a struggle that may end in absolutism and destroy the proud fabric which it has taken us over one hundred years to build up and which yet challenges the admiration of the world in its strength and greatness. As to radical socialism I have simply this to say: The struggle for existence and the survival of the fittest by natural selection will go on as long as life lasts on this earth. This has been the law of evolution, and will continue to be the law as long as man is subject to growth and decay and the immutable laws of nature, despite of all the fine-spun theories about man's perfect equality.

Men are not created equal in the sense of the socialist, and never will be. If they could be, the processes of nature as well as the divine plan of creation must be changed. Some are born sound in mind and body, and others are ushered into the world as cripples and weaklings; some are surrounded by climatic advantages, others are not; some have natural advantages, and others have not; although all are similar in body and mind, the greatest dissimilarity exists between them, and no two human beings are alike, or should be so. All must struggle to exist or development must cease, and the weak must fall by the wayside and the strong will reach the goal.

Eines schickt sich nicht für alle,
Siehe jeder wo er bleibe,
Siehe jeder was er treibe,
Und wer steht das er nicht falle.

—Goethe.

Society might and should protect the weak and feeble, but it can never demand the same service of the weak that it can demand of the strong and the active, and when it forces the latter to share equally the value of their earnings with the former, it proscribes personal freedom as much as the master who forces his slave to work for him without remuneration.

Between the shiftless and the industrious the inequality and injustice would be still more glaring. No panacea against indolence has yet been discovered, and if the nation undertakes to provide for the lazy and shiftless by issuing to them the same material allowances that it extends to the industrious and thrifty, it simply enslaves the latter to maintain in idleness the former. The principle of mine and thine is as old as the race and is imbedded in nature's instinct, and finds expression even in the plant and animal kingdom. It is the mainspring in life's economy upon which rests all progress in elastic balance. Remove it by society's decrees and you remove man's incentive to development and he must revert to barbarism.

Self-interest is as necessary to uphold progress as selfishness is detrimental thereto; but by destroying the first you still retain the second, and thereby tie a millstone around man's neck. Virtue and righteousness are strengthened, if not called forth, by their antipodes, vice and wrong; and a hothouse virtue which is maintained without temptation is not worth the name and loses the very ground of its existence.

If man is forced by circumstances to be good and can not be anything else, I ask why should he receive credit for being good? And what element of moral strength is it to him? It is by nature's struggle to higher forms of life and its seeming contradictions and the inscrutable wisdom of a divine plan and energy that life's

problems are solved, and not by the toy makeshifts evolved in man's limited brain.

All the laws society may pass will not change these inexorable laws, and can only serve to impede progress until nature's God has broken these fetters and resumed His onward march on the never-erring path of evolution. Man must work out his happiness on lines of his individuality, and no human being has yet been thrilled with this much-coveted emotion unless he has been permitted to seek and find it in his own way. You can no more force a person to be happy than you can lead an unwilling horse to water and make him drink, and physical comfort least of all will make man happy. He must dare and do, and if need be die, before he can kiss this whimsical phantom.

Yet this heavenly condition on earth is what radical socialism aims to bring about in its advocacy of the destruction of all private enterprise and a substitution therefor of collectivism and national ownership of all means of production and distribution, etc.

Let us turn our back upon a doctrine at once so fantastic and mischievous and set our face toward reforms that are practical and can be carried to realization for the amelioration of the toiling masses, and not fly to ills we know not of, never losing sight of the great central truth that to whatever extent socialism may leave its impress upon certain public activities that it must never be permitted to hamper individual freedom and private rights, for, after all, these are and will continue to be the corner stones of our civilization—civilization which begins and ends with individual liberty.

Control the railways by vesting in a Federal commission the full constitutional power which Congress possesses to regulate interstate commerce and the trusts and clique enterprises must go down before the sharp attack of legitimate competition.

Industrial freedom is based upon equal opportunity, and it can not exist where railways are permitted to discriminate in favor of certain enterprises. Therefore stop discrimination and extortion in freights and you again free American commerce from the thralldom of the trusts and syndicates. Add to this the proper legislation by the several States preventing the formation of trusts, and cooperating with national legislation in this respect, as well as on railway regulation, and then cap the climax with the blessings of bimetallism and a reform in national taxation, so as to reach wealth as well as poverty, and you will hear very little more of national socialism or the referendum, the initiative, or the imperative mandate, but you will have restored representative government to its pristine strength and glory. [Applause on the Democratic side.]





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